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STATE OF WASHINGTON  
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON DEPARTMENT  
OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE CITY OF  
EVERETT,

Defendant.

No.

**04 2 10919 0**

PROSPECTIVE PURCHASER  
CONSENT DECREE RE: ASARCO  
HOUSES, EVERETT SMELTER SITE,  
EVERETT, WASHINGTON

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PROSPECTIVE PURCHASER CONSENT DECREE RE: ASARCO  
HOUSES, EVERETT SMELTER SITE

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## EXHIBITS

- EXHIBIT A. Legal Description of Asarco Houses
- EXHIBIT B. Maps depicting the Everett Smelter Site and relevant portions thereof
- EXHIBIT C. Cleanup Action Plan (FCAP/FEIS)
- EXHIBIT D. Restrictive Covenant 1 and 2
- EXHIBIT E. Public Participation Plan
- EXHIBIT F. Proposed Schedule
- EXHIBIT G. Interim Action Report and Final Design Report
- EXHIBIT H. Letter from EHA to Ecology asserting Innocent Purchaser Defense
- EXHIBIT I. Letter from Ecology to City of Everett re: City's role in supporting EHA's property purchase

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## I. INTRODUCTION

A. This prospective purchaser consent decree ("Decree") is made and entered into by and between the Washington State Department of Ecology ("Ecology") and the Housing Authority of the City of Everett ("EHA").

B. The purpose of this Decree is to (1) resolve the potential liability of EHA for contamination of soil, groundwater and surface water at the Everett Smelter Site (Site) arising from releases or threatened releases of hazardous substances associated with the historic operation of the Everett Smelter; (2) to promote the public interest by providing for remedial action at one portion of the Site referred to as the "Asarco Houses"; and (3) to facilitate the cleanup and redevelopment of contaminated residential land in Everett, Washington, at the "Asarco Houses." The "Asarco Houses" refers to 15 residential properties, lying outside the Fenced Area, with existing single-family and duplex houses, located north of Butler Street on Hawthorne Street, Pilchuck Path and East Marine View Drive. A legal description of the Asarco Houses is attached as Exhibit A. Maps of the Site that depict the extent of the Site plus relevant portions of the Site such as the Asarco Houses, are attached as Exhibit B.

C. EHA is entering into a Purchase and Sale Agreement (the "Agreement") to purchase the Asarco Houses from Domestic Realty Company, a wholly-owned subsidiary of ASARCO Incorporated, a New Jersey Corporation ("Asarco"), current owner of the Asarco Houses.

D. EHA proposes to perform a partial cleanup of the Site, by cleaning up of one portion of the Site, the Asarco Houses, and making the Asarco Houses available for single family or other residential development, consistent with applicable City of Everett zoning provisions and comprehensive plan designations as those designations may be revised.

E. In the absence of this Decree, at the time it acquires an interest in the Asarco Houses, EHA would incur potential liability under RCW 70.105D.040(1)(a) of the Model

1 Toxics Control Act ("MTCA") for performing remedial actions, or for paying remedial costs  
2 incurred by Ecology, resulting from past releases or threatened releases of hazardous substances  
3 at the Site.

4 F. Ecology has identified confirmed or suspected contamination in soil,  
5 groundwater, and surface water at the Site. Ecology has assigned the Site an overall priority  
6 ranking of 1 pursuant to MTCA.

7 G. Asarco has performed a Remedial Investigation and Feasibility Study ("RI/FS")  
8 (1995) and other sampling efforts and studies, which confirmed that environmental media at the  
9 upland area of the Site contain concentrations of hazardous substances above applicable MTCA  
10 cleanup levels, and which characterized the upland area of the Site adequately for cleanup  
11 activities. The upland area of the Site includes the Asarco Houses.

12 H. Ecology has approved an Integrated Final Cleanup Action Plan (1999), as  
13 amended (2002) ("FCAP/FEIS"), attached to this Decree as Exhibit C. Ecology has also  
14 approved an *Interim Action Report and Final Design Report*, both attached as Exhibit G. These  
15 documents provide for (1) removal of all material from the Fenced Area in excess of 3,000  
16 mg/kg of arsenic, followed by (2) removal of all material from the Fenced Area between 150  
17 and 3,000 mg/kg of arsenic and the placement of a minimum of two feet of clean fill, and (3)  
18 compliance monitoring activities. The FCAP/FEIS requires remediation of the Asarco Houses  
19 through removal and containment of material above cleanup levels and remediation levels  
20 specified in the FCAP/FEIS. The application of MTCA cleanup and remediation levels, in  
21 combination with institutional controls, as indicated in the FCAP/FEIS, Exhibit C, and the  
22 *Interim Action Report and Final Design Report*, Exhibit G, is appropriate under MTCA for  
23 single family or other residential redevelopment of the Asarco Houses, the portion of the Site  
24 that is the subject of this Decree (as a result of the 2002 amendment of the FCAP/FEIS, the  
25 Restrictive Covenant(s) to be applied to Asarco Houses' property need not prohibit single  
26 family residential use).

1 I. This Decree promotes the public interest by expediting cleanup activities at the  
2 Site and by facilitating the redevelopment and reuse of a portion of the Site (the Asarco Houses)  
3 for single family or other residential and/or related uses consistent with applicable zoning and  
4 comprehensive plan designations as those designations may be revised.

5 J. EHA has offered to further certain Ecology goals as provided in this Decree, in  
6 exchange for a covenant not to sue and protection from contribution under MTCA. Among  
7 other things, subsequent to purchasing the Asarco Houses, EHA will complete cleanup of the  
8 the Asarco Houses in accordance with the Scope of Work set forth herein (FCAP/FEIS, Exhibit  
9 C, and the Interim Action Report and Final Design Report, Exhibit G) and with the Schedule  
10 (Exhibit F) set forth herein.

11 K. Plans for the redevelopment of the Asarco Houses are not likely to aggravate or  
12 contribute to contamination at the Site, interfere with remedial actions that may be needed on  
13 the Site, or increase human health risks to persons at or in the vicinity of the Site.

14 L. This Decree will provide a substantial public benefit by promoting the cleanup,  
15 redevelopment, and active reuse of contaminated and partially vacant urban residential property  
16 and providing affordable housing and substantial community and economic benefits to the area.

17 M. The Complaint in this action is being filed simultaneously with this Decree. An  
18 answer has not been filed, and there has not been a trial on any issue of fact or law in this case.  
19 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the  
20 Parties agree that settlement of these matters without litigation is reasonable and in the public  
21 interest and that entry of this Decree is the most appropriate means of resolving these matters.

22 N. By entering into this Decree, the Parties do not intend to discharge nonsettling  
23 parties from any liability they may have with respect to matters alleged in the Complaint. The  
24 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
25 sums expended under this Decree.

1 O. This Decree shall not be construed as proof of EHA liability or responsibility for  
2 any releases of hazardous substances or cost for remedial action nor an admission of any facts;  
3 provided, however, that EHA shall not challenge the jurisdiction of Ecology in any proceeding  
4 to enforce this Decree.

5 P. The Court is fully advised of the reasons for entry of this Decree, and good cause  
6 having been shown:

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

8 **II. JURISDICTION**

9 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
10 to MTCA, Chapter 70.105D RCW. Venue is proper in Snohomish County pursuant to RCW  
11 70.105D.050(5)(b).

12 B. Authority is conferred upon the Washington State Attorney General by RCW  
13 70.105D.040(4)(a) and 70.105D.040(5) to agree to a settlement with any potentially liable  
14 person ("PLP") if, after public notice and any required hearing, Ecology finds the proposed  
15 settlement would lead to a more expeditious cleanup of hazardous substances. In addition, the  
16 Attorney General may agree to a settlement with a person not currently liable for remedial  
17 action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that the  
18 settlement will yield substantial new resources to facilitate cleanup, the settlement will expedite  
19 remedial action consistent with the rules adopted under MTCA, and Ecology determines based  
20 upon available information that the redevelopment or reuse of the facility is not likely to  
21 contribute to the existing release or threatened release, interfere with remedial actions that may  
22 be needed at the site, or increase health risks to persons at or in the vicinity of the site. RCW  
23 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by a  
24 court of competent jurisdiction.

25 C. Ecology has determined that a release or threatened release of hazardous  
26 substances has occurred at the Site.

1 D. EHA currently owns a number of properties that are located within the Site's  
2 boundaries, as outlined in Exhibit H to this Decree. Given the unique circumstances and all  
3 information presented by EHA to Ecology in Exhibit H, however, Ecology has determined  
4 under RCW 70.105D.040(3)(b) that EHA innocently purchased such properties and is not  
5 currently liable for the Site under RCW 70.105D.040(1)(a) by virtue of owning such properties.  
6 EHA certifies that it does not currently own any other interest in the Site, except as  
7 contemplated by paragraph E of this Section, below.

8 E. EHA and Asarco are negotiating a Purchase and Sale Agreement for a separate  
9 portion of property at the Site, the Asarco Property, which is part of the Fenced Area of the Site.  
10 EHA expects to enter into a separate Prospective Purchaser Consent Decree (the Fenced Area  
11 Consent Decree) to resolve the liability for the Site that would otherwise be incurred by its  
12 acquisition of the Asarco Property and/or any other interest in the Fenced Area, subsequent to  
13 purchasing the Asarco Houses and entering into this Decree.

14 F. Ecology has not determined that EHA is a PLP for the Site, and EHA has  
15 certified under Section XII (Certification) that it is not otherwise currently liable with respect to  
16 the Site under Chapter 70.105D RCW, and pursuant to paragraphs D and E of this Section.

17 G. Were EHA to acquire any interest in property at the Site in addition to the  
18 separate interests owned by EHA and as described in paragraphs D and E of this Section, it  
19 could become a PLP as an owner or operator under RCW 70.105D.040(1)(a). This Decree is  
20 entered prior to EHA acquisition of any interest in the Asarco Houses in order to resolve EHA's  
21 liability for the Site that would otherwise be incurred through EHA's acquisition of an interest  
22 in the Asarco Houses, and to facilitate a more expeditious cleanup at the Site than otherwise  
23 would occur. This Decree is entered pursuant to the authority set forth in RCW  
24 70.105D.040(5).

25 H. This Decree has been subject to public notice and comment.  
26

1           I.       This Decree will yield substantial new resources to facilitate cleanup, and will  
2 expedite remedial action consistent with Chapter 173-340 WAC. Based on available  
3 information, Ecology has determined that the redevelopment or reuse of the facility will provide  
4 a substantial public benefit and is not likely to contribute to the existing release or threatened  
5 release, interfere with remedial actions that may be needed at the Site, or increase health risks to  
6 persons at or in the vicinity of the Site.

### 7                                   **III. PARTIES BOUND**

8           This Decree shall apply to and be binding upon the Parties to this Decree, their  
9 successors and assigns. The undersigned representative of each party hereby certifies that he or  
10 she is fully authorized to enter into this Decree and to execute and legally bind such party to  
11 comply with the Decree. EHA agrees to undertake all actions required by the terms and  
12 conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change  
13 in ownership or corporate status shall alter EHA's responsibility under this Decree. EHA shall  
14 provide a copy of this Decree to Asarco and all agents, contractors, and subcontractors retained  
15 to perform work required by this Decree, and shall ensure that all work undertaken by such  
16 agents, contractors, and subcontractors complies with this Decree.

### 17                                  **IV. DEFINITIONS**

18           Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200  
19 apply to the terms of this Decree.

20           "Asarco Houses" shall mean the 15 residential properties, lying outside of the Fenced  
21 Area, with existing single-family and duplex houses, located north of Butler Street on  
22 Hawthorne Street, Pilchuck Path and East Marine View Drive, as shown in Exhibit B.

23           "Asarco Property" shall mean the 22 residential-zoned tracts of real property that are  
24 located within the "Fenced Area," as legally described in Exhibit A and shown in Exhibit B.

25           "Consent Decree" or "Decree" shall mean this Decree and each of the Exhibits to the  
26 Decree. All exhibits are integral and enforceable parts of this Decree.

1 "Fenced Area" refers to the Former Arsenic Trioxide Processing Area as shown in  
2 Figure 1-2 of the FCAP/FEIS, Exhibit C, and in Exhibit B. The Fenced Area comprises one  
3 portion of the Site, and includes 22 residential-zoned tracts of real property ("Asarco Property")  
4 along with streets and other public rights of way, generally located south of North Broadway  
5 (SR 529), east of Hawthorne Street, west of East Marine View Drive and north of Butler street,  
6 upon which the residential structures and improvements have been demolished and are now  
7 surrounded by security fencing.

8 "Fenced Area Consent Decree" shall mean the Prospective Purchaser Consent Decree  
9 entered into by EHA subsequent to this Decree, to resolve the liability for contamination at the  
10 Site that EHA would otherwise incur by acquiring an interest in the Asarco Property and/or any  
11 other portion of the Fenced Area.

12 "Final Design Report" shall mean the *Final Design Report, Everett Smelter Site, 2004*,  
13 attached as Exhibit G (Exhibit G also includes the Interim Action Report), and incorporated  
14 herein by reference.

15 "Integrated Final Cleanup Action Plan" and "FCAP/FEIS" shall mean the combined  
16 Integrated Final Cleanup Action Plan and Final Environmental Impact Statement for the Upland  
17 Area, November 19, 1999, as amended, attached as Exhibit C, and incorporated herein by  
18 reference.

19 "Interim Action Report" shall mean the *Interim Action Report, Fenced Area Cleanup,*  
20 *Everett Smelter Site, 2002*, attached as Exhibit G (Exhibit G also includes the Final Design  
21 Report), and incorporated herein by reference.

22 "Parties" refers to the Washington State Department of Ecology ("Ecology") and the  
23 Housing Authority of the City of Everett ("EHA").

24 "Peripheral Area" shall mean that portion of the upland area of the Site, as shown in  
25 Figure 1-2 of the FCAP/FEIS, Exhibit C, and in Exhibit B, which is outside of the Fenced Area.  
26

1 "Asarco Tacoma Smelter" shall mean the portion of the Commencement Bay Near  
2 Shore Tideflats Superfund site which is Asarco's former Tacoma Smelter, Ruston Way and  
3 North 51<sup>st</sup> Street, Tacoma, WA 98407, EPA ID WAD980726368.

4 "Section" shall mean a portion of this Decree identified by a Roman numeral and  
5 including one or more paragraphs.

6 "Site" shall mean the Everett Smelter Site located in Everett, Washington. The Site is  
7 defined by the extent of contamination cause by the release or threatened release of hazardous  
8 substances at the Site. The Site is generally located in northeast Everett and is more particularly  
9 described in Exhibit B to this Decree, which is a detailed Site diagram. The Site includes as one  
10 portion the Fenced Area, and as another portion, the Asarco Houses. The Site constitutes a  
11 Facility under RCW 70.105D.020(4).

12 "Successors in Interest and Assign" or "successors and assigns" shall mean any person  
13 who acquires an interest in the Asarco Houses subsequent to EHA acquiring an interest in the  
14 Asarco Houses, through purchase, lease, transfer, assignment, or otherwise.

## 15 V. STATEMENT OF FACTS

16 Ecology makes the following findings of fact:

17 1. The Site is located in Everett, Washington, and consists of approximately 686  
18 acres. The Asarco Houses constitutes a portion of the Site and consists of approximately 2.5  
19 acres. Maps of the Site, which depict the extent of the Site plus relevant portions of the Site  
20 including the Fenced Area, Asarco Houses, and Asarco Property, are attached as Exhibit B.

21 2. The Everett Smelter Site previously hosted a smelter plant that, at the turn of the  
22 last century, was one of the largest industrial facilities in Everett. In 1894, the Puget Sound  
23 Reduction Company began operating the smelter, refining ores primarily from the Monte Cristo  
24 mining district. Some of the ore from the Monte Cristo mining district contained over  
25 25 percent total arsenic. To recover arsenic from the ore, an arsenic processing plant was  
26 constructed on the southern end of the Everett Smelter Site. The plant consisted of several

1 structures, including additional smoke stacks, flues, ovens and mills, and a large arsenic  
2 processing building.

3 3. In 1903, a corporation that subsequently became ASARCO Incorporated  
4 ("Asarco") bought and continued operating the smelter. Asarco subsequently dismantled the  
5 smelter in 1914 and 1915.

6 4. Asarco sold the smelter and its surrounding land-holdings through a series of  
7 transactions between 1914 and 1936 to different buyers, including the Weyerhaeuser Company  
8 ("Weyerhaeuser"), the State of Washington Department of Transportation, the City of Everett  
9 and Burlington Northern. In addition, 17.89 acres were purchased and subsequently developed  
10 into residential neighborhoods. About 25 houses were built on property that is now within the  
11 Fenced Area.

12 5. During an environmental investigation in 1990, Weyerhaeuser discovered an  
13 outcrop of slag discovered on the hillside below East Marine View Drive. As part of the  
14 investigation, slag, soil, and ground water samples were collected on Weyerhaeuser property  
15 and analyzed for the presence of heavy metals. After receiving the data, Weyerhaeuser notified  
16 Ecology that a release of a hazardous substance had occurred at the Everett Smelter Site.

17 6. Ecology conducted an initial investigation of the Smelter Site in December 1990.  
18 The investigation included a site visit, historic research of the area, and a review of the data  
19 previously submitted by Weyerhaeuser.

20 7. Ecology conducted a Site Hazard Assessment (SHA) of the Smelter Site in  
21 February 1991. The SHA consisted of a magnetic survey, to attempt to locate the extent of  
22 buried slag, and collection of 20 surface soil samples that were analyzed for metals. Laboratory  
23 analysis demonstrated releases of arsenic, cadmium, and lead to the soils found in the residential  
24 area on the site.

25 8. Ecology conducted a "Pre-Remedial Investigation" (Pre-RI) in May 1991. The  
26 Pre-RI consisted of the preparation of a site map and collection of additional soil samples. The

1 purpose of the investigation was to further characterize the nature and extent of elevated  
2 concentrations of residual metals that were identified in the SHA. Results of the Pre-RI  
3 confirmed releases of arsenic, cadmium, and lead in surface soils throughout the study area.

4 9. By letter dated August 29, 1991, Ecology notified Asarco of its status as a  
5 "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

6 10. In April 1992 Ecology issued Enforcement Order No. DE92TC-N147 to Asarco.  
7 This Order required Asarco to perform a Remedial Investigation/Feasibility Study and certain  
8 Interim Actions to limit exposure of residents to arsenic and other metals at the Smelter Site.

9 11. In March 1994, Ecology issued the first amendment to Enforcement Order  
10 No. DE92TC-N147. The first amendment required Asarco to perform additional interim actions  
11 and prepare an interim deliverable remedial investigation report. The amendment also required  
12 Asarco to undertake additional sampling for the remedial investigation and extended the  
13 schedule.

14 12. In 1994 and 1995, Asarco voluntarily implemented a property buy-out program  
15 for the homes located in the Fenced Area. All but two of the homes were purchased as part of  
16 this program.

17 13. In September 1995 Ecology issued Enforcement Order No. DE95TC-N350 to  
18 Asarco. This Order required Asarco to immediately take action to stop the exposure to arsenic  
19 of residents, pets, and others who resided in the two remaining houses at 520 and 534 East  
20 Marine View Drive, within the Fenced Area. Thereafter, Asarco purchased these properties and  
21 the families vacated them.

22 14. Pursuant to Enforcement Order DE92TC-N147, Asarco prepared an Interim  
23 Deliverable report in April 1994 and a Remedial Investigation and Feasibility Study (RI/FS)  
24 report (*Everett Smelter Remedial Investigation and Feasibility Study, prepared by*  
25 *Hydrometrics, Inc. for Asarco Inc. and dated September 1995*) for most of the study area.

1        15.     Based on analytical data in the RI/FS report, there is evidence of arsenic and lead  
2 in ground water and arsenic and lead in surface water on the Site. Based on other analytical  
3 data collected, there is evidence of arsenic and lead in house dust on the Site.

4        16.     Subsequent to issuance of Enforcement Order Nos. DE92TC-N147 and  
5 DE95TC-N350 Asarco expanded its property buy-out program and purchased all but fifteen of  
6 the residences in the area south of Broadway, east of Balsam Lane, north of Butler Street, and  
7 west of East Marine View Drive. Since Asarco's purchase, all of the homes located within the  
8 Fenced Area have been vacated and demolished. Many of the homes adjacent to the Fenced  
9 Area have also been vacated, although Asarco is currently leasing some of these properties,  
10 known as the Asarco Houses, for residential use.

11       17.     After public notice and comment, Ecology issued the Integrated Final Cleanup  
12 Action Plan and Final Environmental Impact Statement for one portion of the Everett Smelter  
13 Site (FCAP/FEIS) on November 19, 1999. The FCAP/FEIS required, among other things, that  
14 all material within the Fenced Area with an arsenic concentration greater than 3,000  
15 milligrams/kilogram (mg/kg, equivalent to parts per million) be excavated and sent off-site to a  
16 facility permitted to accept such waste. This requirement was based on concern over leaving  
17 high levels of contamination in an urban neighborhood that, if exposed, could constitute an  
18 immediate threat to human health. The FCAP/FEIS also requires remediation of the Asarco  
19 Houses through removal and containment of material above cleanup levels and remediation  
20 levels specified in the FCAP/FEIS.

21       18.     As documented in the RI/FS and FCAP/FEIS, the remedial action to be  
22 implemented pursuant to this Decree will achieve partial cleanup of the Site by achieving  
23 cleanup standards for one portion of the Site, the Asarco Houses. The remedial action to be  
24 implemented under the FCAP/FEIS includes (1) removal of all material from the Fenced Area  
25 in excess of 3,000 mg/kg of arsenic, followed by (2) removal of all material from the Fenced  
26 Area between 150 and 3,000 mg/kg of arsenic and the placement of a minimum of two feet of

1 clean fill, and (3) compliance monitoring activities. The FCAP/FEIS requires remediation of  
2 the Asarco Houses through removal and containment of material above cleanup levels and  
3 remediation levels specified in the FCAP/FEIS. Because treatment, excavation, disposal, and/or  
4 recycling of all hazardous substances at this portion of the Site is not practicable, the remedy for  
5 the Asarco Houses of the Site includes elements of on-site containment, through on-site  
6 capping, as set forth in the FCAP/FEIS. The remedy therefore includes monitoring and  
7 institutional controls.

8 19. In January 2000 Asarco issued the draft *Comprehensive Lowland Area Remedial*  
9 *Investigation Report* (LL Report). Asarco's report concluded that it is likely that remediation  
10 activities planned for the Fenced Area would be successful in intercepting and removing current  
11 sources of metals to ground water and surface water. Asarco's report found that the best  
12 approach for addressing elevated arsenic concentrations was to begin with the Fenced Area.

13 20. On June 10, 2002, Ecology issued Enforcement Order No. 02TCPNR-4059 to  
14 Asarco. Enforcement Order No. 02TCPNR-4059 required Asarco to perform an interim action  
15 to remove the most contaminated material within the Fenced Area, consisting of arsenic  
16 concentrations exceeding 3,000 mg/kg. Specifically, the enforcement order required Asarco to  
17 excavate and send to an off-site facility all flue dust, arsenic trioxide, soil, and any other  
18 material with an arsenic concentration exceeding 3,000 mg/kg.

19 21. Ecology amended Enforcement Order No. 02TCPNR-4059 in December of  
20 2002, to require Asarco to include removal of material outside of the Fenced Area with arsenic  
21 concentrations exceeding 3,000 mg/kg. The material outside the Fenced Area that is known to  
22 have concentrations exceeding the 3,000 mg/kg limit is located along East Marine View Drive.

23 22. Enforcement Order No. 02TCPNR-4059 required Asarco to submit a work plan  
24 for accomplishing the required cleanup work. Asarco submitted a draft work plan in December  
25 2002. The work plan proposed accomplishing the required work in 2003 and 2004, but  
26 acknowledged that delay of removal of material until 2004 would violate the Order. Asarco's

1 work plan indicated Asarco intended to send excavated material to its Asarco Tacoma Smelter,  
2 but contained a contingency plan for actions to implement if the material could not be sent to  
3 the Asarco Tacoma Smelter.

4 23. In a letter dated March 18, 2003, Ecology approved Asarco's December 2002  
5 draft work plan.

6 24. On June 20, 2003, after correspondence established Asarco's inability to meet  
7 the April 30, 2003 mobilization date stated in Enforcement Order No. 02TCPNR-4059, Ecology  
8 filed suit in Snohomish County Superior Court. The suit sought injunctive relief to cause  
9 Asarco to come into compliance with Enforcement Order No. 02TCPNR-4059, and adhere to  
10 the schedule which had been set out in the Ecology approved December 2002 work plan.

11 25. On October 20, 2003, the Court entered an Agreed Judgment requiring Asarco to  
12 come into compliance with Enforcement Order No. 02TCPNR-4059 and to comply with an  
13 agreed schedule/timeline to achieve final removal of material with arsenic concentrations  
14 exceeding 3,000 mg/kg by October 31, 2004 and to submit to Ecology a draft As-Built Report  
15 documenting such removal by December 31, 2004.

16 26. On December 1, 2003, EHA and Asarco entered into an Option to Purchase (the  
17 "Option") the Asarco Property and the Asarco Houses, with an Option term of 120 days, which  
18 has been extended to 150 days. EHA and Asarco are currently negotiating a Purchase and Sale  
19 Agreement for the Asarco Property and Asarco Houses.

20 27. The City of Everett has conducted land use planning under Ch. 36.70A RCW,  
21 and the Site is designated 1.3, Single Family Residential, by the Everett Comprehensive Plan.  
22 The Site has been used for residential purposes and is zoned R-2, single family medium density  
23 residential. Any hazardous substances in soil that may remain on portions of the Asarco Houses  
24 after the remedial action has been completed pursuant to this Decree will not pose a threat to  
25 human health and the environment. In order to enable the work in this Decree to proceed, the  
26 City of Everett has agreed to take certain actions, including guaranteeing an EHA loan, granting

1 EHA powers as a community renewal agency, and abandoning certain rights of way and  
2 utilities. In a letter dated May 18, 2004, which is attached as Exhibit I to this Decree and  
3 incorporated herein by reference, Ecology has confirmed to the City that it does not consider the  
4 City to be acquiring liability under MTCA for its role in supporting EHA's purchase and  
5 cleanup of these properties.

6 28. EHA intends to facilitate the redevelopment of the Asarco Houses portion of the  
7 Site for single family or other residential purposes consistent with applicable City of Everett  
8 comprehensive plan designations and zoning regulations as those designations may be revised.  
9 EHA intends, as necessary, to seek comprehensive plan and zoning changes to permit higher  
10 density residential development than may be allowed under current designations and  
11 regulations.

## 12 VI. DESCRIPTION OF PLANNED PROJECT

13 EHA proposes to acquire the Asarco Houses through purchase pursuant to a purchase  
14 and sale agreement that is currently being negotiated. The sale is expected to close on or before  
15 September, 2004.

16 EHA proposes to perform a partial cleanup of the Site by cleaning up the Asarco Houses  
17 as described in this Decree, and to facilitate the redevelopment of the Asarco Houses for single  
18 family or other residential uses, consistent with the City of Everett's zoning and comprehensive  
19 plan designations for the Site as those designations may be revised. EHA shall upon closing on  
20 the Asarco Houses, conduct the cleanup of the Asarco Houses in accordance with the Scope of  
21 Work set forth herein (FCAP/FEIS, Exhibit C, and the Interim Action Report and Final Design  
22 Report, Exhibit G) and with the Schedule (Exhibit F) set forth herein. EHA expects that Asarco  
23 will utilize, *inter alia*, sale proceeds from EHA's purchase of the Asarco Houses, and matching  
24 funds from an Environmental Trust Fund administered by the U.S. Environmental Protection  
25 Agency, to remediate the Fenced Area plus an additional adjacent area, by removing material  
26 with arsenic concentrations exceeding 3,000 mg/kg, in accordance with the Agreed Judgment.

1 EHA shall then subsequently acquire an interest in the Fenced Area by purchasing the Asarco  
2 Property, and complete the cleanup of the Fenced Area of the Site in accordance with a scope of  
3 work and schedule to be set forth in a separate settlement with the state (the Fenced Area  
4 Consent Decree), including but not limited to: removal of material with concentrations between  
5 150 and 3,000 mg/kg, regrading of the Fenced Area, placement of a marker fabric and a  
6 minimum of two feet of clean fill over contaminated soil, and implementation of required  
7 monitoring and institutional controls.

8 The placement date (not to exceed June 2006 for the demolished houses and not to  
9 exceed October 30, 2004 for the houses to be refurbished) and the specifications for the  
10 minimum of two feet of clean fill shall be established in the Site Restoration Plan as approved  
11 by Ecology (or an Interim Site Restoration Plan, if one is prepared, as approved by Ecology).  
12 Unless otherwise approved by Ecology in the Site Restoration Plan: (1) the minimum of two  
13 feet of clean fill shall be topsoil that is either not contaminated with hazardous substances, or  
14 that both meets MTCA unrestricted land use soil cleanup levels and constitutes "clean soil" as  
15 defined in WAC 173-350-100 and is suitable to support lawns or other vegetation typical of  
16 single family residential use; and (2) the cap shall be placed and hydroseeded by October 31,  
17 2004 if possible, but in any event not later than September 1, 2005. If the City of Everett has  
18 approved redevelopment project plans for the Asarco Houses area prior to capping and the City  
19 approves of a delay, then Ecology may agree to delay completion of the capping until June  
20 2006.

21 The minimum of two feet of clean soil will be used for landscaping and other activities  
22 consistent with the residential use of the Fenced Area portion of the Site. Controlled  
23 disturbance or modification of the cap as required for site redevelopment activities, including  
24 potential short-term exposure of soils beneath the capping layer necessary for the installation of  
25 fence posts and/or modification of the cap elevations and contours, is allowable provided such  
26 disturbance is performed in accordance with the Restrictive Covenants (Exhibit D).

1 The proposal will ensure the cleanup of approximately 2.5 acres of land and mitigate  
2 existing exposure pathways at the Asarco Houses.

3 Ecology has complied with the State Environmental Policy Act ("SEPA") environmental  
4 review requirements for the proposed remedial actions to be performed. Ecology has been  
5 established as the agency lead pursuant to SEPA. The SEPA Final Environmental Impact  
6 Statement for the planned remedial actions is integrated with the Final Cleanup Action Plan  
7 dated November 19, 1999, as amended (FCAP/FEIS) and is attached as Exhibit C.

## 8 VII. WORK TO BE PERFORMED

9 This Decree contains a program designed to protect human health and the environment  
10 at the Asarco Houses area of the Site from the known release, or threatened release, of  
11 hazardous substances or contaminants at, on, or from the Site.

### 12 A. Scope of Work

13 After the Effective Date, EHA shall conduct removal of contaminated material at the  
14 Asarco Houses and perform other actions as required by the FCAP/FEIS, the Interim Action  
15 Report and the Final Design Report, including but not limited to preparation of the Landscape  
16 Buffer Plan and Final Site Restoration Plan. With respect to the compliance monitoring  
17 requirements set forth in the Compliance Monitoring Plan, incorporated as Appendix A into  
18 both the Interim Action Report and the Final Design Report (Exhibit G), EHA and its  
19 successors and assigns shall be responsible under this Consent Decree for implementing only  
20 those requirements of the Compliance Monitoring Plan applying to soil in the Peripheral Area  
21 and import material placed in the Peripheral Area, as such requirements are applicable to the  
22 Asarco Houses and import material placed at the Asarco Houses.

23 The contaminated soils from the Asarco Houses and affected rights of ways and utilities  
24 on or adjacent to the Asarco Houses shall be disposed of at the Asarco Tacoma Smelter. EHA  
25 may request an extension of schedule based upon good cause, pursuant to Section XXIV  
26 (Extension of Schedule), if the Asarco Tacoma Smelter becomes unavailable for disposal of

1 materials from the Fenced Area as required by this Decree. Coordination of cleanup and  
2 development will minimize disruption to the surrounding community. Ecology has reviewed  
3 and approved the proposed methods for transportation and disposal as described in the Final  
4 Design Report.

5 EHA shall provide security at the Asarco Houses designed to prevent exposure of  
6 unauthorized persons to contaminated soils. Security measures shall be maintained during the  
7 implementation of the remediation activities required by this Decree, unless otherwise agreed to  
8 by Ecology.

9 Completion of remediation for any parcel may be certified by Ecology after receipt of all  
10 validated performance monitoring data and pursuant to Section XXVII (Certifications by  
11 Ecology).

12 Because residual concentrations of hazardous substances in groundwater at the Site will  
13 exceed cleanup levels following completion of the remedial action, and because residual  
14 concentrations of hazardous substances in soils at certain parcels of the Asarco Houses may  
15 exceed cleanup levels following completion of the remedial action, EHA shall either: (1) record  
16 Restrictive Covenant 1 shown in Exhibit D for parcels on which soil contamination remains or  
17 (2) record Restrictive Covenant 2 shown in Exhibit D for parcels where no soil contamination  
18 remains. EHA must seek Ecology's prior written approval before filing a Restrictive Covenant  
19 for any parcel within ten (10) days of the completion of the remedial action for that parcel or for  
20 the Asarco Houses as a whole. EHA shall then file the Restrictive Covenant with the  
21 Snohomish County Auditor's Office within ten (10) days of receiving Ecology's written  
22 approval, and shall then provide Ecology with a copy of each recorded Restrictive Covenant  
23 within thirty (30) days of the recording date. If associated replatting of any such parcels will  
24 occur within an expected timeframe and no activities conducted at the parcels in question will  
25 threaten the integrity of the remedial action or the continued protection of human health and the  
26 environment in the interim, EHA may extend the timeline for seeking Ecology's written

1 approval of the Restrictive Covenant for the parcel in question to within ten (10) days of any  
2 associated replatting, and the timeline for filing such Restrictive Covenant will be extended to  
3 within ten (10) days of EHA's receipt of Ecology's written approval. If at any point in the  
4 future the conditions requiring a restrictive covenant for any parcel under this Section no longer  
5 exist, then EHA, or its Successors in Interest and Assigns, may submit a request to Ecology that  
6 the restrictive covenant be eliminated. The restrictive covenant shall be removed, if Ecology,  
7 after public notice and opportunity to comment, concurs.

8 B. Schedule for Work

9 The Schedule for Work is set forth in Exhibit F.

10 C. EHA agrees not to perform any remedial actions outside the scope of this Decree  
11 unless approved in writing by Ecology. All work conducted by EHA under this Decree shall be  
12 done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

13 **VIII. ECOLOGY COSTS**

14 EHA agrees to pay costs incurred by Ecology pursuant to this Decree and consistent  
15 with WAC 173-340-550(2). These costs shall include work performed by Ecology or its  
16 contractors for, or on, the Asarco Houses of the Site under Ch. 70.105D RCW both prior to and  
17 subsequent to the issuance of this Decree for investigations, remedial actions, and Decree  
18 preparation, negotiations, oversight, and administration relating to work that is required by this  
19 Decree. Ecology costs shall include costs of direct activities and the support costs of direct  
20 activities as defined in WAC 173-340-550(2). EHA agrees to pay the required amount within  
21 ninety (90) days of receiving from Ecology an itemized statement of costs that includes a  
22 summary of costs incurred, an identification of involved staff, and the amount of time spent by  
23 involved staff members on the project, unless Ecology agrees in writing and in advance to an  
24 extended schedule for payment. A general statement of work performed will be provided upon  
25 request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within  
26 ninety (90) days of receipt of the itemized statement will result in interest charges pursuant to

1 WAC 173-340-550(4), unless Ecology agrees in writing and in advance to an extended payment  
2 schedule.

### 3 IX. GRANT FUNDING

4 Pursuant to RCW 70.105D.070(3)(a) and Chapter 173-322 WAC, Ecology has made the  
5 following determinations: (a) EHA is a local government required, pursuant to this Decree, to  
6 undertake remedial action at the Site; and (b) EHA is prepared to proceed promptly to  
7 accomplish the remediation set forth in Section VII (Work to Be Performed), and expenses  
8 incurred in implementing the work to be performed, hereunder are eligible for a local  
9 government grant; and (c) implementation of this Decree will lead to a more expeditious  
10 cleanup of hazardous substances at the Site in compliance with cleanup standards adopted under  
11 RCW 70.105D.030(2)(e).

### 12 X. DESIGNATED PROJECT COORDINATORS

13 The project coordinator for Ecology is:

14 David L. South  
15 Department of Ecology  
16 3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
Telephone: (425-649-7200)

17 The project coordinator for EHA is:

18 Mr. Bud Alkire  
19 Executive Director  
The Housing Authority of the City of Everett  
20 P.O. Box 1547, Everett, WA 98206-1547  
Telephone: (425) 303-1102

21 Each project coordinator shall be responsible for overseeing the implementation of this  
22 Decree. The Ecology project coordinator will be Ecology's designated representative at the  
23 Site. To the maximum extent possible, communications between Ecology and EHA, and all  
24 documents, including reports, approvals, and other correspondence concerning the activities  
25 performed pursuant to the terms and conditions of this Decree shall be directed through the  
26 project coordinators. The project coordinators may designate, in writing, working-level staff

1 contacts for all or portions of the implementation of the work required by this Decree. The  
2 project coordinators may agree to minor changes to the work to be performed without formal  
3 amendments to this Decree. Minor changes will be documented in writing by Ecology.  
4 Substantial changes shall require amendment of this Consent Decree.

5 Any party may change its respective project coordinator. Written notification shall be  
6 given to the other party at least ten (10) calendar days prior to the change.

#### 7 **XI. PERFORMANCE**

8 All work performed pursuant to this Decree shall be under the direction and supervision,  
9 as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and  
10 expertise in hazardous waste site investigation and cleanup. All construction and engineering  
11 work performed pursuant to this Decree must be under the supervision of a professional  
12 engineer. EHA shall notify Ecology in writing of the identity of such engineer(s) or  
13 hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying  
14 out the terms of this Decree, in advance of their involvement at the Site.

#### 15 **XII. CERTIFICATION OF EHA**

16 EHA represents and certifies that, to the best of its knowledge and belief, it has fully and  
17 accurately disclosed to Ecology the information currently in its possession or control that relates  
18 to the environmental conditions at and in the vicinity of the Site, or to EHA's right and title  
19 thereto.

20 EHA represents and certifies that it did not cause or contribute to a release or threatened  
21 release of hazardous substances at the Site and is not otherwise potentially liable under RCW  
22 70.105D.040(1), pursuant to paragraph D of Section II (Jurisdiction) and except by becoming an  
23 owner and/or operator of the Site by acquiring an interest in the Asarco Houses.

#### 24 **XIII. TRANSFER OF INTEREST IN PROPERTY**

25 No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
26 interest in any portion of Asarco Houses area of the Site shall be consummated by EHA without

1 provision for continued operation and maintenance of any containment system, treatment  
2 system, and/or monitoring system installed or implemented pursuant to this Decree.

3 Prior to EHA's transfer of any interest in all or any portion of Asarco Houses area of the  
4 Site, and during the effective period of this Decree, EHA shall serve a copy of this Decree upon  
5 any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and,  
6 at least thirty (30) days prior to any transfer, EHA shall notify Ecology of said transfer. Upon  
7 transfer of any interest, EHA shall restrict uses and activities to those consistent with this  
8 Consent Decree and notify the transferee(s) of the restrictions on the use of the property.

#### 9 **XIV. AMENDMENT OF CONSENT DECREE**

10 This Decree may only be amended by a written stipulation among the Parties that is  
11 entered by the Court, or by order of the Court. Such amendment shall become effective upon  
12 entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any  
13 Party.

14 EHA shall submit any request for an amendment to Ecology for approval. Ecology shall  
15 indicate its approval or disapproval in a timely manner after the request for amendment is  
16 received. If the amendment to the Decree represents a substantial change, Ecology will provide  
17 public notice and opportunity for comment. Reasons for the disapproval of a proposed  
18 amendment to the Decree shall be stated in writing. If Ecology does not agree to any proposed  
19 amendment, the disagreement may be addressed through the dispute resolution procedures  
20 described in Section XV (Dispute Resolution).

#### 21 **XV. DISPUTE RESOLUTION**

22 A. In the event a dispute arises as to any approval, disapproval, proposed change, or  
23 other decision or action by Ecology's project coordinator, the Parties shall use the dispute  
24 resolution procedure set forth below.

25 (1) Upon receipt of the Ecology project coordinator's decision, EHA shall  
26 have fourteen (14) days to notify Ecology's project coordinator of any objection to the decision.

1           (2)    The Parties' project coordinators shall then confer in an effort to resolve  
2 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,  
3 Ecology's project coordinator shall issue a written decision.

4           (3)    EHA may then request Ecology management review of the decision.  
5 This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven  
6 (7) days of receipt of Ecology's project coordinator's written decision.

7           (4)    Ecology's Toxics Cleanup Program Manager shall conduct a review of  
8 the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the  
9 request for review by EHA. The Toxics Cleanup Program Manager's decision shall be  
10 Ecology's final decision on the disputed matter.

11          B.    If Ecology's final written decision is unacceptable to EHA, EHA has the right to  
12 submit the dispute to the Court for resolution. The Parties agree that one judge should retain  
13 jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree.  
14 In the event EHA presents an issue to the Court for review, the Court shall review the action or  
15 decision of Ecology on the basis of whether such action or decision was arbitrary and capricious  
16 and render a decision based on such standard of review.

17          C.    The Parties agree to only utilize the dispute resolution process in good faith and  
18 to expedite, to the extent possible, the dispute resolution process whenever it is used. When  
19 either party uses the dispute resolution in bad faith or for purposes of delay, the other party may  
20 seek sanctions.

21          Implementation of these dispute resolution procedures shall not provide a basis for delay  
22 of any activities required in this Decree, unless Ecology agrees in writing to a schedule  
23 extension or the Court so orders.

1                                   **XVI. CONTRIBUTION PROTECTION**

2           With regard to claims for contribution against EHA, the Parties agree that EHA is  
3 entitled to protection against claims for contribution for matters addressed in this Decree as  
4 provided by RCW 70.105D.040(4)(d).  
5

6           For the purposes of this Section, "matters addressed" include all remedial actions taken  
7 or to be taken and all remedial action costs (including Ecology's oversight costs) incurred or to  
8 be incurred by Ecology or any other person with respect to the Site. This Contribution  
9 Protection does not protect EHA against claims for contribution or recovery of remedial action  
10 costs taken or to be taken by Ecology or any other person with respect to the Site, in the event  
11 EHA incurs liability for the Site by acquiring any interest in the Site other than the Asarco  
12 Houses as contemplated by this Decree, and EHA does not resolve such liability for the Site  
13 through a separate, valid consent decree.  
14

15                                   **XVII. COVENANT NOT TO SUE; REOPENERS**

16           A.   Covenant Not to Sue: In consideration of EHA's compliance with the terms and  
17 conditions of this Decree, Ecology covenants not to institute legal or administrative actions  
18 against EHA regarding the release or threatened release of hazardous substances at the Site  
19 covered by this Decree.  
20

21           This Decree covers only the Everett Smelter Site, specifically identified in Exhibit B and  
22 those hazardous substances that Ecology knows are located at the Site as of the date of entry of  
23 this Decree. This Decree does not cover any other hazardous substance or area. Ecology  
24 retains all of its authority relative to any substance or area not covered by this Decree. In  
25 addition, this Covenant Not to Sue does not provide EHA protection from legal or  
26

1 administrative actions against EHA for the release or threatened release at the Site, in the event  
2 EHA incurs liability for the Site by acquiring any separate interest in the Site (other than the  
3 Asarco Houses, as contemplated by this Decree), and EHA does not resolve such liability for  
4 the Site through a separate, valid consent decree.

5 This Covenant Not To Sue shall have no applicability whatsoever to:

- 6 (1) Criminal liability;
- 7 (2) Liability for damages to natural resources;
- 8 (3) Any Ecology action, including cost recovery, against potentially liable persons  
9 not a party to this Decree.

10 If factors not known to Ecology at the time of entry of the settlement agreement are  
11 discovered and present a previously unknown threat to human health or the environment, and  
12 Ecology determines in light of this information that further remedial action is necessary at the  
13 Asarco Houses area of the Site to protect human health or the environment, the Court shall  
14 amend this covenant not to sue.

15 B. Reopeners: Ecology specifically reserves the right to institute legal or  
16 administrative action against EHA to require it to perform additional remedial actions at the  
17 Asarco Houses and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under  
18 the following circumstances:

- 19 (1) Upon EHA's failure to meet the requirements of this Decree, including but not  
20 limited to, failure of the remedial action to meet the cleanup standards identified in the  
21 FCAP/FEIS (Exhibit C); or

(2) Upon Ecology's determination that action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to human health or the environment; or

(3) Upon the availability of new information regarding factors previously unknown to Ecology, including the nature or quantity or hazardous substances at the Site, and Ecology determines, in light of this information, that further remedial action is necessary at the Asarco Houses to protect human health or the environment; or

(4) Upon Ecology's determination that additional remedial actions are necessary to achieve cleanup standards for the Asarco Houses within the reasonable restoration time frame set forth in the FCAP/FEIS.

C. Except in the case of an emergency, prior to instituting legal or administrative action against EHA pursuant to paragraph B. above, Ecology shall provide EHA with fifteen (15) calendar days notice of such action.

## XVIII. DISCLAIMER

This Decree does not constitute a representation by Ecology that the Site is fit for any particular purpose.

## XIX. RETENTION OF RECORDS

During the pendency of this Decree and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXVII (Duration of Decree), EHA shall preserve all records reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, EHA shall make all records available to Ecology and allow access for review within a reasonable period of time.

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**XX. ACCESS**

Ecology or any Ecology authorized representative shall have full authority to enter and freely move about all property at the Site that EHA either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing EHA's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by EHA. EHA shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Defendant where remedial activities or investigations will be performed pursuant to this Decree. Ecology or any authorized representative shall give reasonable notice before entering any Site property owned or controlled by EHA unless an emergency prevents such notice. All Parties who access the Site pursuant to this paragraph shall comply with the approved Health and Safety Plan in the Final Design Report, Exhibit G.

**XXI. COMPLIANCE WITH OTHER APPLICABLE LAWS**

A. All actions carried out by EHA pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this Section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 75.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for remedial action under this Decree that are known to be applicable at the time of entry of the Decree have been included in the FCAP/FEIS (Exhibit C), and/or the Interim Action Report and/or Final Design Report (Exhibit G), and are binding and enforceable requirements of the Decree.

1 EHA has a continuing obligation to determine whether additional permits or approvals  
2 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under  
3 this Decree. In the event either EHA or Ecology determines that additional permits or approvals  
4 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under  
5 this Decree, it shall promptly notify the other party of this determination. Ecology shall  
6 determine whether Ecology or EHA shall be responsible to contact the appropriate state and/or  
7 local agencies. If Ecology so requires, EHA shall promptly consult with the appropriate state  
8 and/or local agencies and provide Ecology with written documentation from those agencies of  
9 the substantive requirements those agencies believe are applicable to the remedial action.  
10 Ecology shall make the final determination on the additional substantive requirements that must  
11 be met by EHA and on how EHA must meet those requirements. Ecology shall inform EHA in  
12 writing of these requirements and EHA shall have the opportunity to comment on such  
13 requirements. Once established by Ecology, the additional requirements shall be enforceable  
14 requirements of this Decree. EHA shall not begin or continue the remedial action potentially  
15 subject to the additional requirements until Ecology makes its final determination.

16 Ecology shall ensure that notice and opportunity for comment is provided to the public  
17 and appropriate agencies prior to establishing the substantive requirements under this Section.

18 C. Pursuant to RCW 70.105D.090(2), in the event that Ecology determines that the  
19 exemption from complying with the procedural requirements of the laws referenced in RCW  
20 70.105D.090(1) would result in the loss of approval from a federal agency necessary for the  
21 state to administer any federal law, such exemption shall not apply and EHA shall comply with  
22 both the procedural and substantive requirements of the laws referenced in RCW  
23 70.105D.090(1), including any requirements to obtain permits.  
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## XXII. SAMPLING, DATA REPORTING, AND AVAILABILITY

With respect to the implementation of this Decree, EHA shall make the results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to Ecology and shall submit these results in accordance with Section XXIII (Progress Reports).

Ground water sampling shall be submitted to Ecology according to the requirements of WAC 173-340-840(5). These submittals shall be provided to Ecology in accordance with Section XXIII (Progress Reports). Such groundwater sampling will be submitted to Ecology in conjunction with the as built reports required by WAC 173-340-400(6)(b)(ii).

If requested by Ecology, EHA shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by EHA pursuant to the implementation of this Decree. EHA shall notify Ecology at least seven (7) working days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken by EHA or its authorized representative, of any samples collected by Ecology pursuant to the implementation of this Decree, provided it does not interfere with the Ecology's sampling. Without limiting Ecology's rights under Section XX (Access), Ecology shall endeavor to notify EHA at least five (5) working days prior to any sampling collection activity.

## XXIII. PROGRESS REPORTS

EHA shall submit to Ecology written monthly progress reports that describe the actions taken during the previous month to implement the requirements of this Decree. The progress report shall include the following:

A. A list of activities that have taken place at the Asarco Houses pursuant to the terms of this Decree during the month;

B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;

1 C. Description of all deviations from the Schedule (Exhibit F) during the  
2 current month and any planned deviations in the upcoming month;

3 D. For any deviations in schedule, a plan for recovering lost time and  
4 maintaining compliance with the schedule;

5 E. All raw data (including laboratory analyses) received by EHA during the  
6 past month and an identification of the source of the sample; and

7 F. A list of deliverables for the upcoming reporting period if different from  
8 the Schedule.

9 EHA may substitute project reports submitted by Asarco or EHA's agents, contractors or  
10 subcontractors for any EHA progress reports required under this Section, provided such reports  
11 meet the above requirements. All Progress Reports shall be submitted by the tenth (10) day of  
12 the month in which they are due after the Effective Date of this Decree. Unless otherwise  
13 specified, Progress Reports and any other documents submitted pursuant to this Decree shall be  
14 sent by hard copy and electronic copy to Ecology's project coordinator.

#### 15 XXIV. EXTENSION OF SCHEDULE

16 A. An extension of schedule shall be granted only when a request for an extension is  
17 submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the  
18 deadline for which the extension is requested, and good cause exists for granting the extension.  
19 All extensions shall be requested in writing. The request shall specify the reason(s) the  
20 extension is needed.

21 An extension shall only be granted for such period of time as Ecology determines is  
22 reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety  
23 (90) days only as a result of:

24 (1) Delays in the issuance of a necessary permit which was applied for in a timely  
25 manner; or

26 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

1 (3) Endangerment as described in Section XXV.

2 A requested extension shall not be effective until approved by Ecology or, if required,  
3 by the Court. Ecology shall act upon any written request for extension in a timely fashion.  
4 Ecology shall give EHA written notification in a timely fashion of any extensions granted  
5 pursuant to this Decree. Unless the extension is a substantial change, it shall not be necessary to  
6 amend the Decree pursuant to Section XIV (Amendment of Consent Decree) when a schedule  
7 extension is granted.

8 B. The burden shall be on EHA to demonstrate to the satisfaction of Ecology that  
9 the request for such extension has been submitted in a timely fashion and that good cause exists  
10 for granting the extension. Good cause includes, but is not limited to:

11 (1) Circumstances beyond the reasonable control and despite the due diligence of  
12 EHA, including delays caused by unrelated third parties or Ecology, such as (but not limited to)  
13 delays by Ecology in reviewing, approving, or modifying documents submitted by EHA; or

14 (2) The unavailability of the Asarco Tacoma Smelter for disposal of the materials to  
15 be removed under this Decree; or

16 (3) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or  
17 other unavoidable casualty; or

18 (4) Endangerment as described in Section XXV.

19 However, neither increased costs of performance of the terms of the Decree nor changed  
20 economic circumstances shall be considered circumstances beyond the reasonable control of  
21 EHA.

## 22 XXV. ENDANGERMENT

23 If, for any reason, Ecology determines that any activity being performed at the Site  
24 pursuant to this Decree is creating or has the potential to create a danger to human health or the  
25 environment, Ecology may direct EHA to cease such activities for such period of time as it  
26 deems necessary to abate the danger. EHA shall immediately comply with such direction.

1 If, for any reason, EHA determines that any activity being performed at the Site pursuant  
2 to this Decree is creating or has the potential to create a danger to human health or the  
3 environment, EHA may cease such activities. EHA shall notify Ecology's project coordinator  
4 as soon as possible, but no later than twenty-four (24) hours after making such determination or  
5 ceasing such activities. Upon Ecology's direction, EHA shall provide Ecology with  
6 documentation of the basis for the determination or cessation of such activities. If Ecology  
7 disagrees with EHA's cessation of activities, it may direct EHA to resume such activities.

8 If Ecology concurs with or directs a work stoppage pursuant to this Section, EHA's  
9 obligations with respect to the ceased activities shall be suspended until Ecology determines the  
10 danger is abated, and the time for performance of such activities, as well as the time for any  
11 other work dependent upon such activities, shall be extended, in accordance with Section XXIV  
12 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the  
13 circumstances.

14 Nothing in this Order shall limit the authority of Ecology, its employees, agents, or  
15 contractors to take or require appropriate action in the event of an emergency.

## 16 XXVI. PUBLIC PARTICIPATION

17 The Public Participation Plan for the remediation of the Asarco Houses pursuant to the  
18 terms of this Decree, is attached as Exhibit E. Ecology shall maintain the responsibility for  
19 public participation at the Site. However, EHA shall cooperate with Ecology, and shall:

20 A. If agreed to by Ecology, prepare drafts of public notices and fact sheets at  
21 important stages of the remedial action, such as the submission of work plans, Remedial  
22 Investigation/Feasibility Study reports and engineering design reports. As appropriate, Ecology  
23 will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of  
24 Ecology's presentations and meetings;

25 B. Notify Ecology's project coordinator prior to the preparation of all press releases  
26 and fact sheets, and before meetings with the interested public and local governments. Likewise,

1 Ecology shall notify EHA prior to the issuance of all press releases and fact sheets, and before  
2 meetings with the interested public and local governments. For all press releases, fact sheets,  
3 meetings, and other outreach efforts by EHA that do not receive prior Ecology approval, EHA  
4 shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach  
5 effort was not sponsored or endorsed by Ecology;

6 C. If agreed to by Ecology, participate in public presentations on the progress of the  
7 remedial action at the Site. Participation may be through attendance at public meetings to assist in  
8 answering questions, or as a presenter;

9 D. In cooperation with Ecology, assist in maintaining information repositories to be  
10 located at the following locations:

11  
12 **Department of Ecology**  
13 **Northwest Regional Office, Central Files**  
14 3190 160<sup>th</sup> Avenue SE  
Bellevue, WA  
425-649-7190

15 **Everett Public Library**  
16 2702 Hoyt Avenue  
Everett, WA 98201  
425-257-8000

17 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured  
18 ground water, surface water, soil sediment, and air monitoring data; remedial actions plans,  
19 supplemental remedial planning documents, and all other similar documents relating to  
20 performance of the remedial action required by this Decree shall be promptly placed in the  
21 Northwest Regional Office repository.

22 **XXVII. DURATION OF DECREE AND RETENTION OF JURISDICTION;**  
23 **CERTIFICATIONS BY ECOLOGY**

24 This remedial program described in the Decree shall be maintained and continued until  
25 EHA has received written notification by Ecology that the requirements of this Decree have  
26 been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court.

1 When dismissed, Section XVII (Covenant Not to Sue) and Section XVI (Contribution  
2 Protection) of this Decree, shall survive.

3 In order to facilitate the timely redevelopment of the Asarco Houses, upon completion  
4 and confirmation of the remediation activities specified in the Scope of Work herein (the  
5 FCAP/FEIS, the Interim Action Report and the Final Design Report), Ecology may issue a  
6 Partial Certificate of Completion where appropriate on a parcel by parcel basis, after consulting  
7 with the City of Everett and after City of Everett approval of the Final Site Restoration Plan and  
8 work completed under that plan for any parcel in question, noting that redevelopment may  
9 proceed based only upon the implementation of any required institutional controls, including  
10 Restrictive Covenants that are made applicable to any parcel in question under the terms of this  
11 Decree. In the alternative, upon completion and confirmation of the remediation activities  
12 specified in the Scope of Work herein (the FCAP/FEIS, the Interim Action Report and the Final  
13 Design Report), after consultation with the City of Everett, and upon implementation of  
14 institutional controls and City of Everett approval of the Final Site Restoration Plan and work  
15 completed under that plan, Ecology will issue a Certificate of Completion.

#### 16 **XXVIII. WITHDRAWAL OF CONSENT**

17 If the Court withdraws its consent, this Decree shall be null and void at the option of any  
18 party and the accompanying complaint shall be dismissed without costs and without prejudice.  
19 In such an event, no party shall be bound by the requirements of this Decree. This Section shall  
20 not create a basis for withdrawal of consent or termination of this Decree other than those  
21 created by the terms of this Decree or that exist by operation of law or equity.

#### 22 **XXIX. IMPLEMENTATION OF REMEDIAL ACTION**

23 If Ecology determines that EHA has failed without good cause to implement the remedial  
24 action, in whole or in part, Ecology may, after notice to EHA, perform any or all portions of the  
25 remedial action that remain incomplete. If Ecology performs all or portions of the remedial action  
26 because of the EHA's failure to comply with its obligations under this Decree, EHA shall

1 reimburse Ecology for the costs of doing such work in accordance with Section VIII (Ecology  
2 Costs), provided that EHA is not obligated under this Section to reimburse Ecology for costs  
3 incurred for work inconsistent with or beyond the scope of this Decree.

#### 4 **XXX. INDEMNIFICATION**

5 EHA agrees to indemnify and save and hold the State of Washington, its employees, and  
6 agents harmless from any and all claims or causes of action for death or injuries to persons or  
7 for loss or damage to property arising from or on account of acts or omissions of EHA, its  
8 officers, employees, agents, or contractors in entering into and implementing this Decree.  
9 However, EHA shall not indemnify the State of Washington nor save nor hold its employees  
10 and agents harmless from any claims or causes of action arising out of the negligent acts or  
11 omissions of the State of Washington, or employees or agents of the State in implementing the  
12 activities pursuant to this Decree.

#### 13 **XXXI. CLAIMS AGAINST THE STATE**

14 EHA hereby agrees that it will not seek to recover any costs accrued in implementing the  
15 remedial action required by this Decree from the State of Washington or any of its agencies.  
16 This Section does not limit EHA from applying for grant funding from the Local Toxics Control  
17 Account for a portion of the costs incurred in implementing this Decree. Except as provided  
18 above, however, EHA expressly reserves its right to seek to recover any costs incurred in  
19 implementing this Decree from any other PLP.

#### 20 **XXXII. SEVERABILITY**

21 If any section, subsection, sentence or clause of this Decree is found to be illegal, invalid  
22 or unenforceable, such illegality, invalidity or unenforceability will not affect the illegality or  
23 enforceability of this Decree as a whole or of any other section, subsection, sentence or clause.  
24  
25  
26

XXXIII. EFFECTIVE DATE

The Effective Date of this Decree is the final date when both the Decree is entered by the Court and title to the Asarco Houses vests in EHA. If EHA does not take title to the Asarco Houses, this Decree shall be void.

The undersigned Parties enter into this Prospective Purchaser Consent Decree on the date specified below.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE  
Attorney General



James J. Pendowski  
Program Manager  
Toxics Cleanup Program

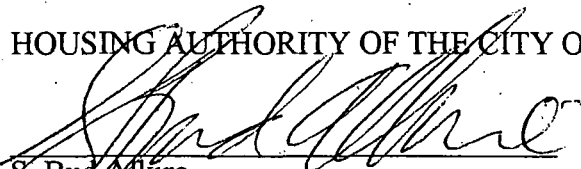


Kristie E. Carevich, WSBA No. 28018  
Assistant Attorney General

Date: 5/27/04

Date: 6/4/04

HOUSING AUTHORITY OF THE CITY OF EVERETT



S. Bud Alkire  
Executive Director

Date: 6/30/04

ENTERED this 30 day of June, 2004.



JUDGE  
Snohomish County Superior Court

**EXHIBIT A**  
**ASARCO HOUSES LEGAL DESCRIPTION**

**RECEIVED**  
**JUL 12 2004**  
**Environmental Cleanup Office**

**PARCEL A:**

LOTS 8 AND 9; (003966-000-008-00)

LOT 10; (003966-000-010-00)

LOT 11; (003966-000-011-00)

THE SOUTH HALF OF LOT 49 AND ALL OF LOT 50; (003966-000-049-02)

LOT 51; (003966-000-051-00)

THE WESTERLY 60 FEET OF LOTS 55 AND 56; (003966-000-055-01)

THE SOUTH 62.5 FEET OF LOT 57; (003966-000-057-01)

THE NORTH 37.5 FEET OF LOT 57 AND THE SOUTHERLY 25 FEET OF LOT 58;  
(003966-000-057-00)

LOT 58, EXCEPT THE SOUTH 25 FEET, THEREOF, AND ALL OF LOT 59;  
(003966-000-058-00)

LOT 61; (003966-000-061-00)

LOT 62, (003966-000-062-00)

ALL IN BRIDGEWAY, ACCORDING TO THE PLAT THEREOF, RECORDED IN  
VOLUME 10 OF PLATS, PAGE 119, RECORDS OF SNOHOMISH COUNTY,  
WASHINGTON.

**PARCEL J:**

LOT 83, BRIDGEWAY, ACCORDING TO THE PLAT THEREOF, RECORDED IN  
VOLUME 10 OF PLATS, PAGE 119, RECORDS OF SNOHOMISH COUNTY,  
WASHINGTON;

TOGETHER WITH VACATED PORTION OF HAWTHORNE STREET ADJACENT  
TO AND ABUTTING THEREON AS VACATED BY ORDER NO. 3246 RECORDED  
UNDER AUDITOR'S FILE NUMBER 917761, RECORDS OF SNOHOMISH

COUNTY, WASHINGTON, WHICH WOULD ATTACH BY OPERATION OF LAW.  
(003966-000-083-00)

**PARCEL K:**

ALL THAT PORTION OF SECTION 8, TOWNSHIP 29 NORTH, RANGE 5 EAST,  
W.M., IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1 IN PLAT OF  
HAWTHORNE HEIGHTS ADDITION, ACCORDING TO THE PLAT THEREOF,  
RECORDED IN VOLUME 13, OF PLATS, PAGE 29, IN SNOHOMISH COUNTY,  
WASHINGTON;  
THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 1 FOR 140.50  
FEET;  
THENCE NORTHERLY AND AT RIGHT ANGLES TO THE NORTH LINE OF SAID  
LOT 1 FOR 59.03 FEET;  
THENCE NORTH 51°43'33" EAST FOR 143.00 FEET TO A POINT ON THE  
SOUTHWESTERLY MARGIN OF HAWTHORNE STREET THAT IS 85.64 FEET  
NORTHERLY FROM THE POINT OF BEGINNING;  
THENCE SOUTH 27°22'58" EAST ALONG THE WEST LINE OF HAWTHORNE  
STREET FOR 85.64 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION OF SAID PREMISES CONVEYED TO SNOHOMISH  
COUNTY BY DEED RECORDED UNDER AUDITOR'S FILE NUMBER  
7607230242.

(ALSO KNOWN AS LOT 1 OF CITY OF EVERETT SHORT PLAT RECORDED  
UNDER AUDITOR'S FILE NUMBER 7608090251.) (290508-004-007-00)

**PARCEL L:**

ALL THAT PORTION OF SECTION 8, TOWNSHIP 29 NORTH, RANGE 5 EAST,  
W.M., IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1 IN THE PLAT OF  
HAWTHORNE HEIGHTS ADDITION, ACCORDING TO THE PLAT THEREOF,  
RECORDED IN VOLUME 13 OF PLATS, PAGE 29, RECORDS OF SNOHOMISH  
COUNTY, WASHINGTON;  
THENCE NORTHERLY ALONG THE WEST LINE OF HAWTHORNE STREET  
FOR 85.64 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUE NORTHERLY ALONG THE WEST LINE OF HAWTHORNE  
STREET FOR 85.64 FEET TO THE INTERSECTION WITH THE EAST RIGHT OF  
WAY LINE OF HIGHWAY 99 AS NOW REVISED;

THENCE SOUTHWESTERLY ALONG SAID RIGHT OF WAY LINE FOR 150.25 FEET;

THENCE SOUTHERLY AND PARALLEL WITH THE WEST LINE OF HAWTHORNE STREET FOR 59.02 FEET;

THENCE NORTH  $51^{\circ}43'33''$  WEST FOR 143.00 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION OF SAID PREMISES CONVEYED TO SNOHOMISH COUNTY BY DEED RECORDED UNDER AUDITOR'S FILE NUMBER 7607230242;

(ALSO KNOWN AS LOT 2 OF CITY OF EVERETT SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7608090251). (290508-004-012-00)

PARCEL M:

LOT 1, PLAT OF HAWTHORN HEIGHTS ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 13 OF PLATS, PAGE 29, RECORDS OF SNOHOMISH COUNTY, WASHINGTON. (004675-000-001-00)

**EXHIBIT B**  
**MAPS DEPICTING THE EVERETT SMELTER SITE**  
**AND**  
**RELEVANT PORTIONS THEREOF**

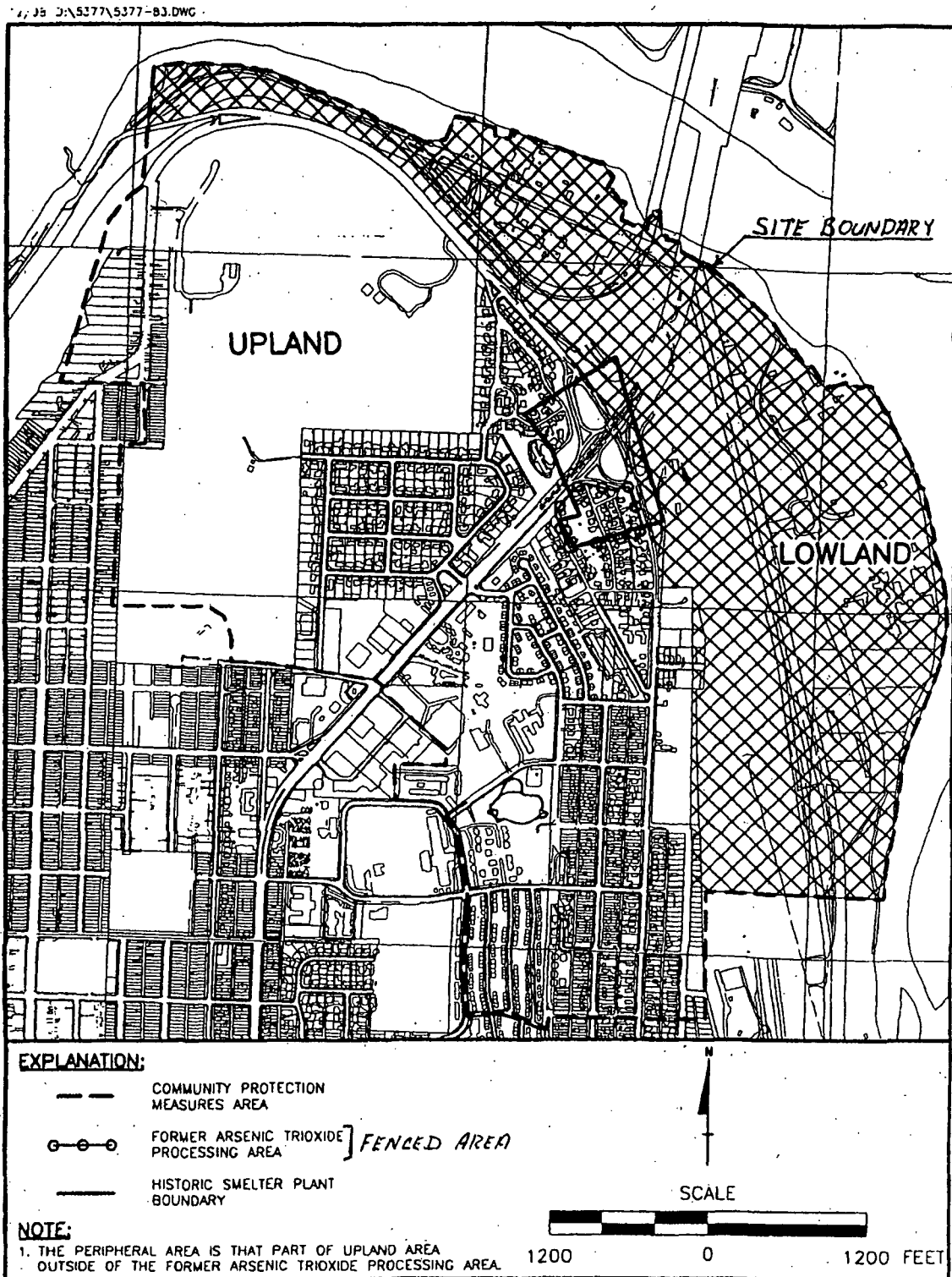


Figure 1-2: Site Features.

# LEGEND

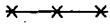


ASARCO PROPERTY



ASARCO HOUSES

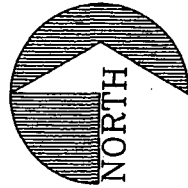
APPROXIMATE LOCATION OF HISTORICALLY OWNED ASARCO PROPERTY BOUNDARY



SECURITY FENCE

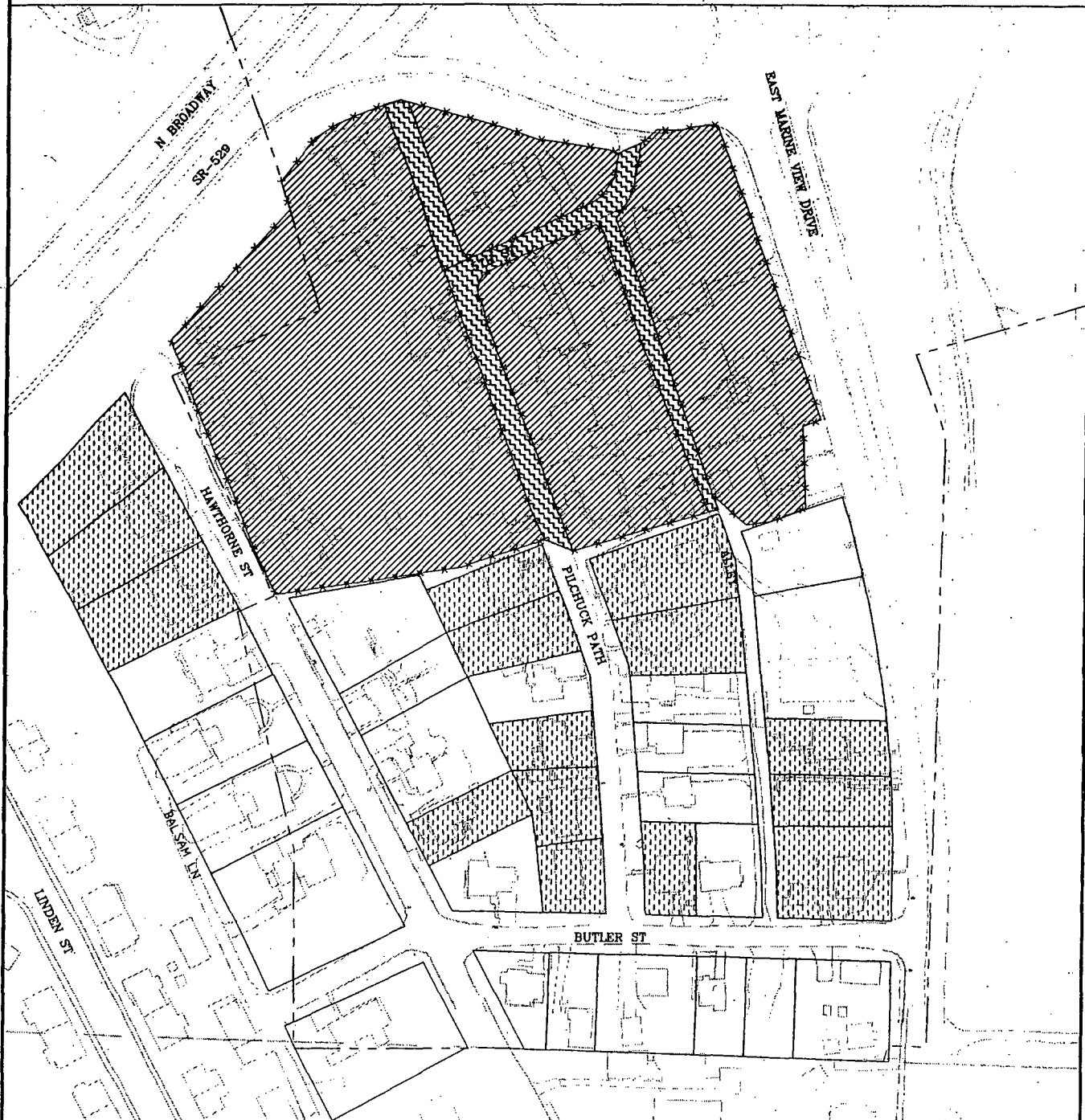


PUBLIC PROPERTY TO BE REMEDIATED



SCALE

0 (In Feet) 150



**ASARCO**  
Consulting, Inc.

PROPERTY MAP  
ASARCO INCORPORATED  
EVERETT, WASHINGTON  
04/19/04

EXHIBIT

B

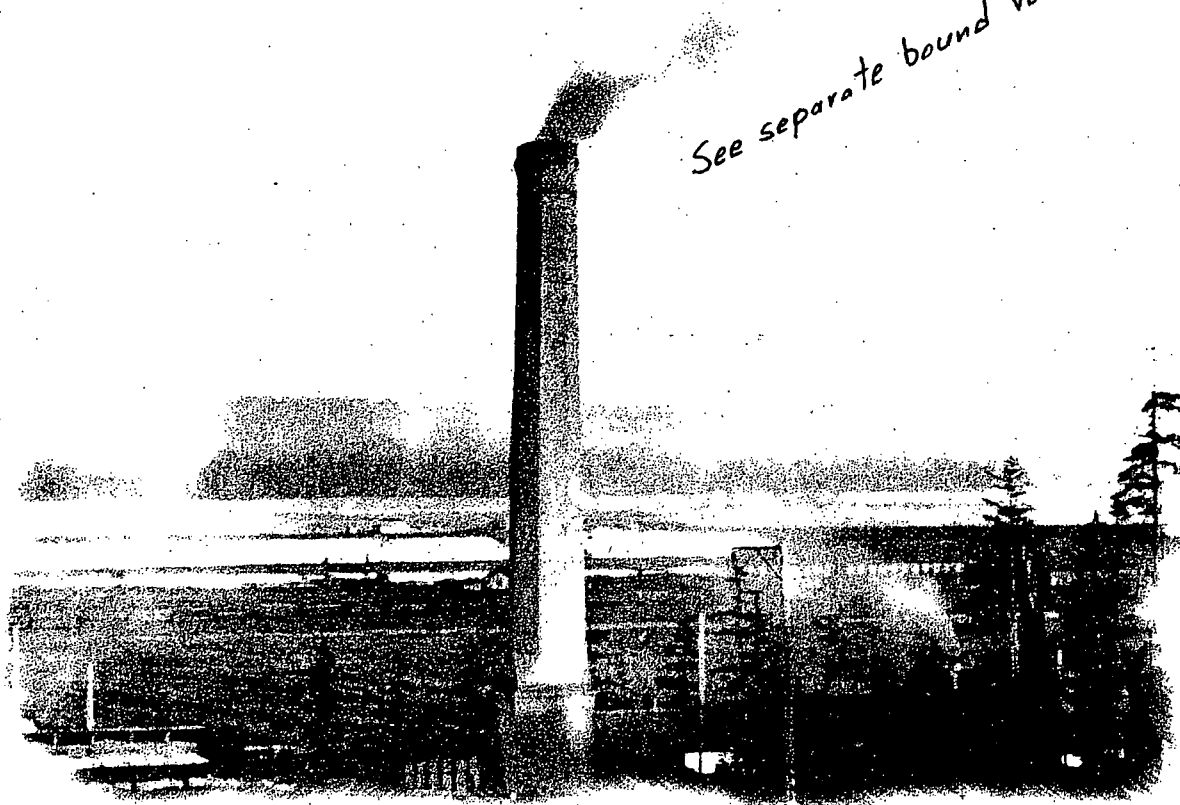
**EXHIBIT C**  
**CLEANUP ACTION PLAN (FCAP/FEIS)**

# EVERETT SMELTER SITE

Everett, Washington

## INTEGRATED FINAL CLEANUP ACTION PLAN and FINAL ENVIRONMENTAL IMPACT STATEMENT for the UPLAND AREA

Volume I



Puget Sound Reduction Works facility looking east. December 10, 1895.  
Duryee Collection. Courtesy of Everett Public Library

by  
Washington State Department of Ecology

November 19, 1999

**EXHIBIT D**  
**RESTRICTIVE COVENANTS 1 AND 2**

RESTRICTIVE COVENANT 1  
[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [name of property owner], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- *[LIST ALL APPLICABLE DOCUMENTS. INSERT THE DATE AND TITLE FOR EACH DOCUMENT LISTED INCLUDING THE NAME OF THE PERSON(S) OR BUSINESS WHO PREPARED THE DOCUMENT.]*

These documents are on file at Ecology's Northwest Regional Office.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of [specifically list substances] which exceed the Model Toxics Control Act Method [list applicable Method A or Method B] for soil and groundwater established under WAC 173-340-740.

The undersigned, [name property owner] is the fee owner of real property (hereafter "Property") in the County of [name of county], State of Washington that is subject to this Restrictive Covenant. The legal description of the Property is as follows:

LEGAL DESCRIPTION

*[Insert legal description or include as an attachment and incorporate by reference]*

[Name property owner] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for any purposes from the Property.

*INSERT SECTION HERE IF CONTAMINATED SOIL REMAINS ON PROPERTY UNDERNEATH A STRUCTURE OR PAVEMENT, etc:* A portion of the Property contains [specifically list substances] contaminated soil located [specifically describe where located; i.e. under the southeast portion of Building 10 in the northeast portion of the Property]. The Owner

shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology, including prior approval by Ecology of the Owner's plans to properly manage contaminated soil.

Section 2. Soil contamination remains on *[portions of]* the property underneath a cap consisting of a minimum of two feet of clean soil. *[DESCRIBE WITH SPECIFICITY AND LEGAL DESCRIPTION WHERE ON THE PROPERTY IN QUESTION THE SOIL IS CAPPED]*. Any activity on *[these areas or in close proximity to these areas of]* the Property that may result in the release or exposure of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway is prohibited without prior written approval from Ecology, including prior approval by Ecology of the Owner's plans to properly manage contaminated soil.

Examples of activities requiring Ecology approval include activities such as drilling, digging, bulldozing or other earthwork when any such activity penetrates the fill by more than 18 inches (except for the installation of fence posts as discussed further below), or the placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability. Prior Ecology approval is not required when activity is undertaken that affects only the top 18 inches or less of the soil cap and therefore does not result in exposure of any contaminated soils that remain under the cap, provided such activity does not stress the surface beyond its load bearing capability, and provided a minimum of two feet of clean soil will be in place at the completion of the activity.

The Owner may, however, install fence posts or other posts when doing so would disturb soil below a depth of 18 inches, without prior Ecology approval. Contaminated soil brought to the surface by installation of fence posts or other posts must be placed into containers or covered with plastic sheeting to prevent contact, especially contact by children. The contaminated soil may be returned to the hole as fill around the fence post. At the conclusion of the post installation the contaminated soil must either be (1) beneath two feet of clean fill, or (2) if placed within two feet of the surface, capped with a minimum of 3 inches of concrete or asphalt at the top of the hole. Any contaminated soil which cannot be managed on site must be disposed of off-site at a properly permitted facility.

If structures, paving, or asphalt are constructed or placed on the property at any point in the future, and contaminated soil is contained beneath the structure, paving, or asphalt, the Owner shall not alter, modify, or remove the structures, paving, or asphalt in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology, including prior written approval of the Owner's plans to properly manage contaminated soil.

Section 3. Except as provided in Section 2, any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment, or that may result in a release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action or create a new exposure pathway, is prohibited.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

\_\_\_\_\_  
[NAME OF PROPERTY OWNER]

\_\_\_\_\_  
[DATE SIGNED]

[Property Owner must have this Restrictive Covenant notarized]

**RESTRICTIVE COVENANT 2**  
**[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]**

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [name of property owner], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- ***[LIST ALL APPLICABLE DOCUMENTS. INSERT THE DATE AND TITLE FOR EACH DOCUMENT LISTED INCLUDING THE NAME OF THE PERSON(S) OR BUSINESS WHO PREPARED THE DOCUMENT.]***

These documents are on file at Ecology's Northwest Regional Office.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of *[specifically list substances]* which exceed the Model Toxics Control Act Method *[list applicable Method A or Method B]* for groundwater established under WAC 173-340-740.

The undersigned, *[name property owner]* is the fee owner of real property (hereafter "Property") in the County of *[name of county]*, State of Washington that is subject to this Restrictive Covenant. The legal description of the Property is as follows:

**LEGAL DESCRIPTION**

*[Insert legal description or include as an attachment and incorporate by reference]*

*[Name property owner]* makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for any purposes from the Property.

Section 2. Any activity on the Property that may interfere with the continued protection of human health and the environment, or that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from

Ecology.

Section 3. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 4. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 5. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 7. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

\_\_\_\_\_  
[NAME OF PROPERTY OWNER]

\_\_\_\_\_  
[DATE SIGNED]

[Property Owner must have this Restrictive Covenant notarized]

**EXHIBIT E**  
**PUBLIC PARTICIPATION PLAN**

**Everett Smelter Site  
Fenced and Adjacent Areas  
Public Participation Plan  
for  
Cleanup 2004**



Prepared by  
Washington State Department of Ecology  
3190 160th Avenue SE  
Bellevue, WA 98008-5452

**April 2004**

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# **Everett Smelter Site Upland Area Public Participation Plan Cleanup 2004**

## **1. Introduction**

Cleanup of contaminated soil within the Everett Smelter site will continue in 2004. Work in 2004 will address the most contaminated soil in the area – the soil within the Fenced Area where the old arsenic processing facilities were located. This fenced-off area is located just south of State Route 529 and between Hawthorne and East Marine View Drive (see Figure 1).

Thirty-seven contaminated residential yards also are anticipated to be cleaned up in 2004. This Public Participation Plan describes the anticipated cleanup activities and public involvement opportunities related to this work.

The Everett Smelter site is located in northeast Everett, Washington. The site extends along the Snohomish River from Legion Park in the northwest to 14th Street in the southeast.

Forty-seven homes with the most contaminated yards outside of the Fenced Area have been cleaned up by the Washington State Department of Ecology (Ecology) with state funds in previous years. No state funding was available in the current state fiscal biennium (July 2003 to June 2005) to clean up additional properties.

Cleanup in 2004 will be done by ASARCO, Inc. Asarco is the last owner of the smelting facilities.

Related to the cleanup work, Asarco is in the midst of a property transaction with the Everett Housing Authority (EHA). Here are some key points to this transaction:

- EHA will purchase 15 Asarco-owned homes outside the Fenced Area and accept liability for cleaning them up.
- Asarco will clean up the contaminated yards of these 15 homes as part of the purchase and sale agreement.
- This purchase and sale agreement also requires Asarco to clean up contaminated yards at an additional 22 homes in the area which are not owned by Asarco.
- After Asarco has removed the most contaminated soil from the Fenced Area (more than 3,000 parts per million arsenic), EHA will purchase this area from

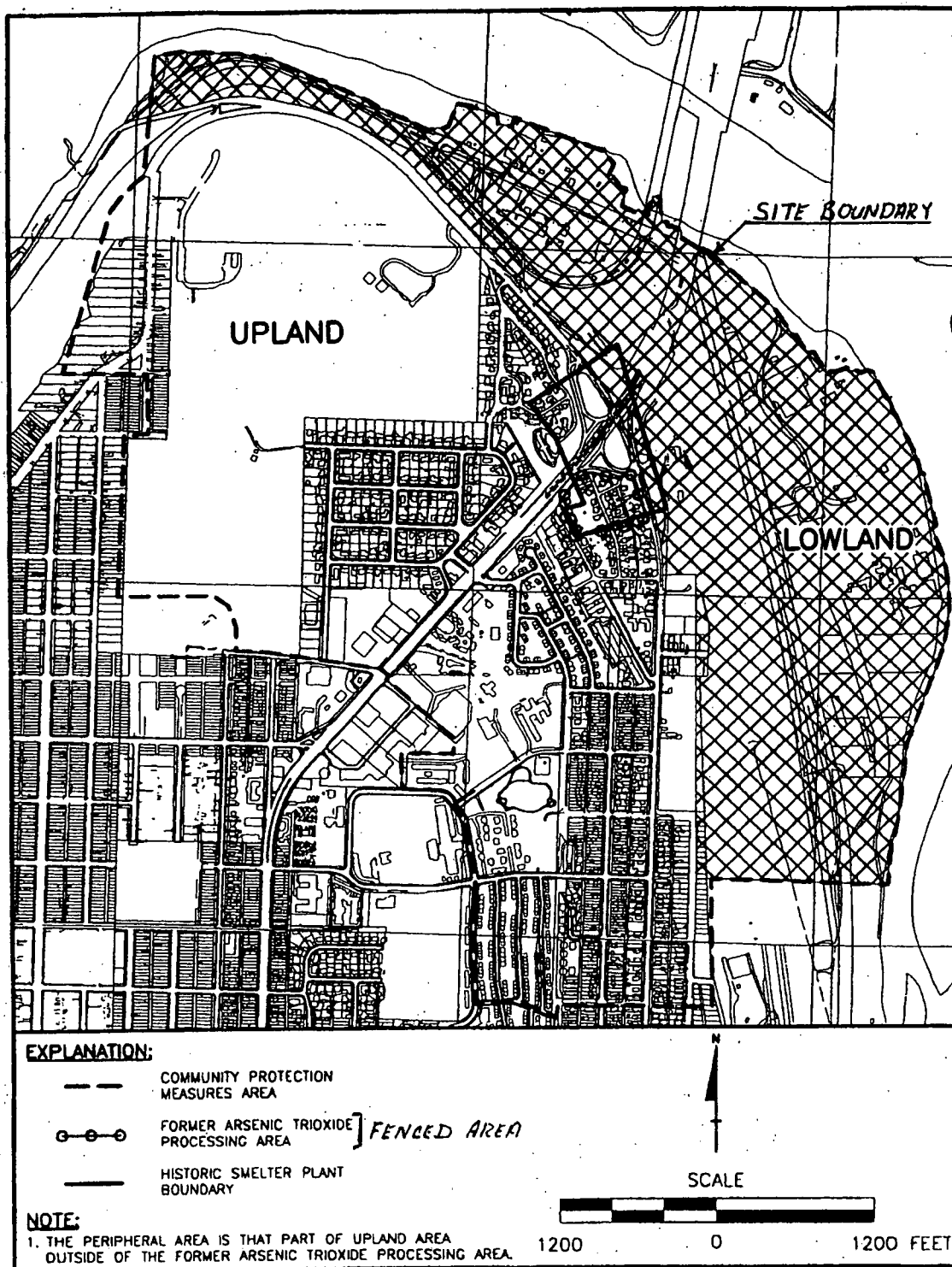


Figure 1. Site Location with Fenced Area

Asarco and accept liability for cleaning up the remaining arsenic-contaminated soil to state standards.

- Asarco will clean up the Fenced Area as a condition of the purchase and sale agreement.
- EHA has negotiated two Prospective Purchaser Consent Decrees with Ecology. One consent decree addresses EHA's liability within the Fenced Area. The other addresses EHA's liability for the 15 houses which EHA will purchase. These agreements specify and limit EHA's liability for known contamination from smelter activity with respect to the property it purchases. These agreements do not relieve Asarco of any responsibility at the Everett Smelter site. Public comment on these Prospective Purchaser Consent Decrees will occur between April 22 and May 21, 2004.

Asarco's contractor will bring equipment to the site by May 15th, in order to complete 2004 cleanup activity in October. The contaminated soil will be barged to a disposal facility at the Asarco smelter near Tacoma.

Funding for this cleanup work will come from several sources including:

- EHA will provide funds to Asarco as consideration for EHA's purchase of the Fenced Area and 15 residential properties (as part of the purchase and sale agreement, Asarco will clean up the Fenced Area, these 15 properties, and 22 additional properties not owned by Asarco).
- \$1 million from a trust fund established by Asarco to address their environmental liabilities nationwide, and
- \$1 million in matching funds will be provided by Ecology to EHA.

EHA has plans to redevelop these properties after cleanup work has occurred. Of the 15 Asarco-owned homes that EHA is purchasing, seven will be demolished and eight will be refurbished. The 22 privately-owned homes will remain in place. Lastly, the Fenced Area will be redeveloped as a single-family neighborhood. For questions about EHA's redevelopment plans, contact Darcy Walker at 425-303-1117.

Future clean up work in the area remains undetermined at this time.

## **2. Site Background**

The Everett Smelter site was discovered in the fall of 1990 when Weyerhaeuser Company found slag on its property during an environmental investigation. Slag is a heavy, black, metallic, and sometimes glassy, rock-like material, which is the once molten waste product from the smelting process. The slag contains high concentrations of lead, arsenic and other metals. A large amount of the slag was mined and used for fill around the area. The slag also was used in the past to make rock wool insulation. A former arsenic smelter which operated between 1893 and 1912, and was demolished by 1914, had generated the slag. Slag piles and building debris were covered with fill soil.

In the following years, the property was sold and developed into residential, commercial, industrial and public use sections.

Asarco completed investigation of the site and submitted a report (the Remedial Investigation and Feasibility Study) to Ecology in 1995. Public comment on the report was solicited at the end of 1995. Ecology reviewed the comments received during the public comment period and began developing a Cleanup Action Plan for the site.

Also in 1997, Ecology and Asarco began a mediated process to make major cleanup decisions for the Cleanup Action Plan. Other stakeholders were invited to participate to move toward an efficient, quick cleanup. Mediation concluded without reaching agreement in August 1998, and Asarco filed a lawsuit in which the company sought to be dismissed as the potentially liable party for the cleanup.

Ecology prepared an Integrated Draft Cleanup Action Plan and Draft Environmental Impact Statement for the residential and commercial portion of the site. This portion of the site, called the upland area, is that area west of the low-lying industrial area along the Snohomish River. This plan was presented for public comment in January 1999. Ninety citizens, governmental agencies and private parties commented. The Integrated Final Cleanup Action Plan and Final Environmental Impact Statement were distributed to the public in November 1999.

In December 1999, a Superior Court decision upheld Asarco's liability for some parts of the site and rejected it for others. Both Ecology and Asarco appealed to the Washington State Supreme Court. The state Supreme Court remanded the case to Superior Court in April 2002, finding that there were not sufficient facts for the Court to reach a decision. Ecology and Asarco subsequently agreed to stay further litigation while addressing the Fenced Area (see next paragraph).

Ecology issued an Enforcement Order to Asarco on June 10, 2002, requiring cleanup of the most contaminated material within the Everett Smelter site. Specifically, the Order called for material with arsenic concentrations above 3,000 parts per million be excavated and disposed of off site. This material is primarily within the Fenced Area, with a small amount immediately adjacent to this area under East Marine View Drive.

Asarco prepared a plan for excavating the material with arsenic concentrations above 3,000 parts per million as required by the Order. The plan also provides for cleaning up material with arsenic concentrations above 150 parts per million in the Fenced Area and for cleaning up selected residential properties adjacent to the Fenced Area. Within the Fenced Area, two feet of clean fill are to be imported to cover the soil with arsenic concentrations between the cleanup level (20 parts per million) and 150 parts per million. At the conclusion of the work, the entire area will be cleaned up to standards which will allow residential use. Contaminated soil will remain on the properties at depths where it is unlikely that people will come into contact with it. Institutional controls will be used (property owner notification, a marker cloth at the top of the contaminated soil) to help

ensure that people are aware of where contaminated material may be encountered so they can take appropriate safety measures.

In December 2003, EHA signed an option with Asarco to purchase the Fenced Area and selected adjacent residential properties owned by Asarco. As described in the Introduction (see page 1), EHA is in the process of purchasing the Fenced Area and 15 Asarco-owned homes, and requiring cleanup of an additional 22 privately-owned homes (see Figure 2).

### **3. Community Background**

The community surrounding the original smelter property is a well-established, diverse neighborhood of working and retired families who own or rent. Many residents closest to this property have owned their homes for 30 years or more. Asarco has purchased 37 homes in this area, including 22 homes (now demolished) on the most contaminated portion of the Everett Smelter site. As described above, this most-contaminated area is the location of the arsenic processing facilities that were demolished; some debris was left behind. A number of renters occupy Asarco-owned homes in the area adjacent to the Fenced Area. Further from the original smelter property are a juvenile detention facility and large complexes of apartments, including housing for low-income families. A major highway interchange bisects the original smelter property.

Members of the community have expressed a number of concerns and criteria for further action that include the following:

a) The cleanup process

- Eliminate further delay.
- Involve the community in decisions that affect its future.
- Meet the requirements of the Model Toxics Control Act (the state regulation that under which Ecology operates to identify, investigate, and cleanup facilities where hazardous substances have been released).

b) Future of the neighborhood

- Allow for re-use of the former smelter property in a way that is compatible with the neighborhood.
- Protect property values.
- Protect human health and the environment over the long term.

### **4. Public Involvement Activities**

The purpose of this Public Participation Plan is to promote public understanding and participation in cleanup activities planned for this site. This section of the plan addresses how Ecology will share information and receive community input on site activities.

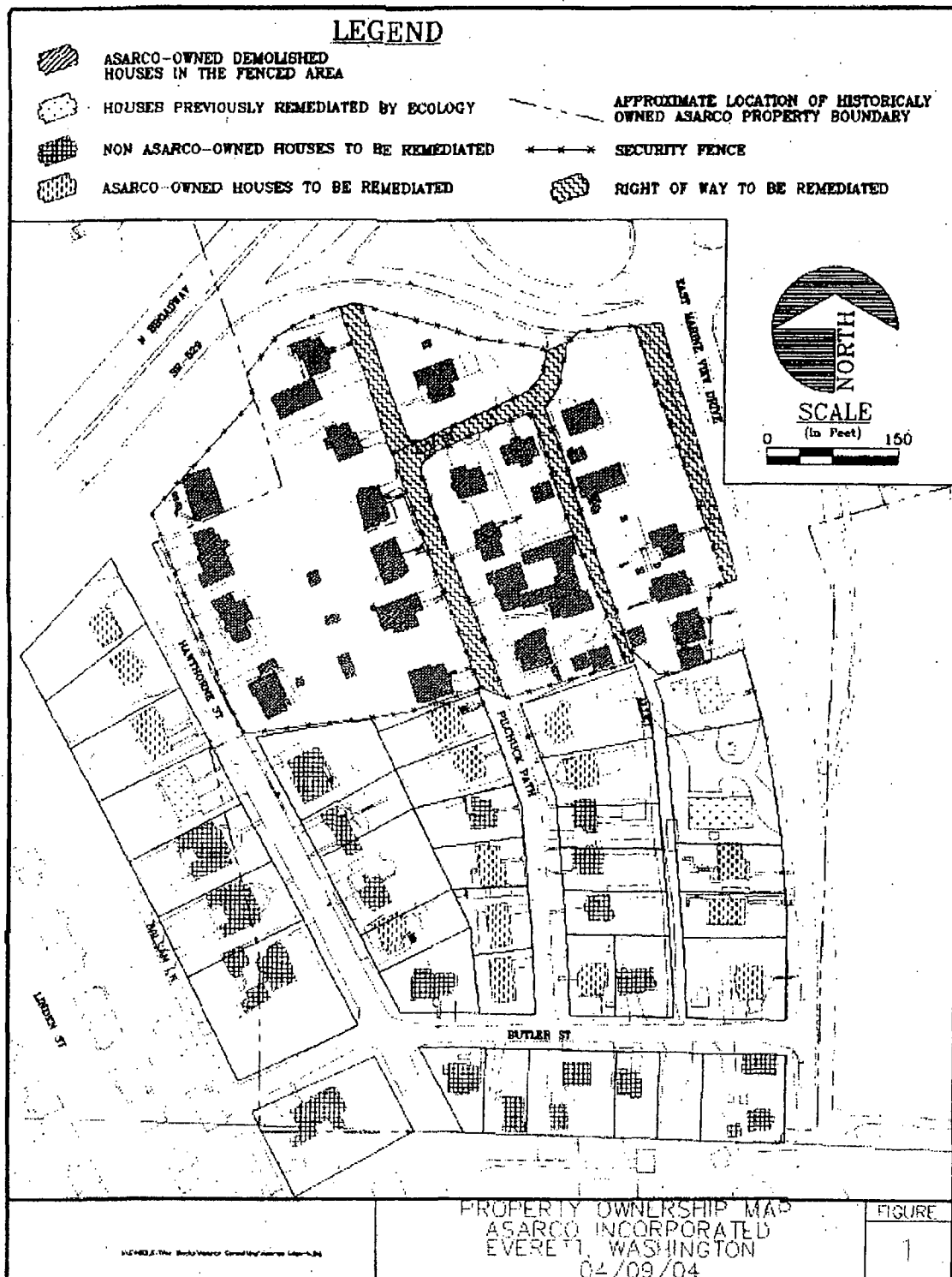


Figure 2. Property Ownership

Ecology uses a variety of activities to facilitate public participation in the investigation and cleanup of sites. Input provided by the community will be implemented whenever possible.

The following is a list of the public involvement activities that Ecology will use, their purposes, and descriptions of when and how they will be used during this phase of cleanup.

### ***Public Comment Periods***

Comment periods are the primary method Ecology uses to get feedback from the public on proposed cleanup decisions. Comment periods usually last 30 days and are required at key points during the investigation and cleanup process before final decisions are made.

During a comment period, the public can comment in writing. After the comment period, Ecology reviews all comments received and considers the need for changes or revisions based on input from the public. If significant changes are made, then a second comment period may be held. If no significant changes are made, then the draft document(s) will be finalized.

Ecology will hold a public comment period, with a public meeting, on the draft Prospective Purchaser Consent Decrees between EHA and Ecology from April 22 through May 21, 2004.

### ***Public Meetings***

Public meetings may be held at key points during the investigation and cleanup process. Ecology also may offer public meetings for actions expected to be of particular interest to the community. These meetings will be held at locations convenient to the community.

As described above, Ecology will hold a public meeting in conjunction with the upcoming public comment period on the Prospective Purchaser Consent Decrees. This meeting also will address upcoming cleanup activities. The public meeting will be held in the Jackson Conference Room at the Everett Community College, 2000 Tower Street, Everett, on April 27th 7:00-8:30PM.

### ***Information Repositories***

Information repositories are locations where residents and other interested persons in the community may read and review site information, including documents that are the subject of public comment. Ecology has established two repositories for the Everett Smelter site:

**Everett Public Library** - all major documents  
2702 Hoyt Avenue  
Everett, WA 98201  
425-257-8000

Hours: Monday through Thursday, 10 a.m. to 9 p.m.  
Friday and Saturday, 10 a.m. to 6 p.m.  
Sunday, 1 p.m. to 5 p.m.

**WA Department of Ecology** - all major documents and complete project records  
3190 160th Avenue SE  
Bellevue, WA 98008  
425-649-7190 (call for an appointment)  
Hours: Monday through Thursday, 8 a.m. to 5 p.m.

While not an official information repository for the site, the Asarco Everett Information Center has most site documents available. Asarco's information center is located at 545 Hawthorne Street in Everett. Call for hours: 425-259-0822.

Some site information also is posted on Ecology's web site at  
[http://www.ecy.wa.gov/programs/tcp/sites/asarco/es\\_main.html](http://www.ecy.wa.gov/programs/tcp/sites/asarco/es_main.html)

### ***Site Register***

The *Site Register* is a bimonthly publication produced by Ecology's Toxics Cleanup Program to announce all of its public meetings and comment periods, as well as many other activities. To receive the *Site Register*, contact Linda Thompson at (360) 407-6069 or by e-mail at [ltho461@ecy.wa.gov](mailto:ltho461@ecy.wa.gov). It also is available on Ecology's web site at [http://www.ecy.wa.gov/programs/tcp/pub\\_inv/pub\\_inv2.html](http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html).

### ***Mailing List***

A mailing list for the Everett Smelter site is maintained by Ecology. The list includes individuals, groups, public agencies, elected officials, private businesses, potentially affected parties, and other known interested parties. The list is updated as needed.

Please contact Rebekah Padgett at 425-649-7257 or by e-mail at [rpad461@ecy.wa.gov](mailto:rpad461@ecy.wa.gov) if you would like to have your address added, changed, or deleted from this mailing list.

### ***Fact Sheets***

Fact sheets will be mailed to persons on the mailing list at the beginning and completion of the 2004 cleanup activities. Additional fact sheets may be sent out as the cleanup process progresses.

### ***Signs and Updates***

Signs will be posted in the neighborhood with contact information and a description of the work being performed. Updates will be posted periodically on the signs outlining what has been accomplished what will be accomplished in upcoming steps.

### ***Newspaper Ads***

Ecology will place ads in the *Everett News Tribune* and *The Herald* to announce public comment periods or public meetings for the site.

### ***Press Releases***

Ecology's public information officer, with the assistance of the cleanup coordinator or public involvement specialist, will issue press releases as needed and, if requested by the press, will arrange a site visit.

### ***Tours***

Tours in the site area may be conducted as the cleanup takes place, if requested by the neighborhood, the press, government officials, etc. The purpose of the tours would be to explain the cleanup process, plans for the area, and to provide an opportunity for these individuals to express concerns and ask questions.

### ***Other Outreach Activities***

Other outreach activities will be conducted as necessary to keep the community informed of the progress of cleanup. If you have suggestions for other activities, please contact Rebekah Padgett at 425-649-7257 or by e-mail at [rp461@ecy.wa.gov](mailto:rp461@ecy.wa.gov).

### ***Plan Update***

This plan will be amended and updated as appropriate. Updates will occur when significant new phases of cleanup are entered.

## **5. Public Points of Contact**

### **Washington State Department of Ecology**

David L. South, Site Manager  
3190 160th Avenue SE  
Bellevue, WA 98008-5452  
425-649-7200  
[dsou461@ecy.wa.gov](mailto:dsou461@ecy.wa.gov)

Rebekah Padgett, Public Involvement Specialist  
3190 160th Avenue SE  
Bellevue, WA 98008-5452  
425-649-7257  
[rp461@ecy.wa.gov](mailto:rp461@ecy.wa.gov)

Larry Altose, Public Information Officer (press contact),  
3190 160th Avenue SE  
Bellevue, WA 98008-5452  
425-649-7009  
lalt461@ecy.wa.gov

Asarco

Clint Stanovsky  
Asarco Everett Information Center  
545 Hawthorne Street  
Everett, WA 98201  
(425) 259-0822  
cstanovsky@alum.mit.edu

Everett Housing Authority

Darcy Walker, Smelter Site Project Manager  
Housing Authority of the City of Everett  
P.O. Box 1547  
Everett, WA 98206-1547  
425-303-1117  
darcyw@evha.org

## **EXHIBIT F PROPOSED SCHEDULE**

Schedule for cleanup at the Asarco Houses. Dates may be modified with approval by Ecology.

- On or before 01 September 2004 Contractor mobilizes to the site.
- 30 October 2004 – Residential soils removal complete at all homes. Cap installation, re-landscaping, and all other cleanup field activities complete at all homes to be refurbished.
- 31 October 2004 – Properties with demolished homes secured for winter.
- 01 September 2005 – Cap installed and hydroseeded at properties with demolished homes (may be extended with consent of Ecology and the City of Everett).
- June 2006 – Cap installation completed at properties with demolished homes (if extension approved with the consent of Ecology and the City of Everett).

**EXHIBIT G**  
**INTERIM ACTION REPORT**  
**AND**  
**FINAL DESIGN REPORT**

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**INTERIM ACTION REPORT  
FENCED AREA CLEANUP  
EVERETT SMELTER SITE**

Public Review Draft

*Approved as Final  
March 18, 2003  
David L. Smith*

Prepared for:

**ASARCO, Incorporated**  
5219 N Shirley St  
Suite 101  
Tacoma, WA 98407

*Please see separate bound volume.*

Prepared by:

**Asarco Consulting, Inc.**  
5219 N Shirley St  
Suite 100  
Tacoma, WA 98407

December 2002

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*Everett Smelter/SIT 15.7*  
*Site Map Copy*

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**FINAL DESIGN REPORT**  
**EVERETT SMELTER SITE**

**FINAL**

*Please see separate bound volume and engineering drawings*

Prepared by:

**ASARCO Consulting, Inc.**  
5219 N Shirley St  
Suite 100  
Tacoma, WA 98407

March 29, 2004

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**EXHIBIT H**  
**LETTER FROM EHA TO ECOLOGY**  
**ASSERTING**  
**INNOCENT PURCHASER DEFENSE**

FOSTER PEPPER & SHEFELMAN PLLC

ATTORNEYS AT LAW



April 20, 2004

Direct Phone  
(206) 447-8940

Direct Facsimile  
(206) 749-1924

E-Mail  
DelaJ@foster.com

David South  
Washington State Department of Ecology  
3190 - 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008-5452

Re: Everett Housing Authority Property Ownership in ASARCO Everett  
Study Area

Dear Dave:

As part of the Everett Housing Authority ("EHA") application for a Prospective Purchaser Agreement Consent Decree, EHA is providing you with this letter describing EHA's ownership of property within the ASARCO Everett Smelter area. Pursuant to RCW 70.105D.040(3)(b), EHA believes that, to the extent any of the property owned by EHA is part of the Everett ASARCO "Facility", at the time of its purchases, EHA had no reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for remedial action, was released or disposed of on, in or at the property purchased by EHA. This letter describes the properties owned by EHA, and the inquiry undertaken by EHA in connection with the purchases.

1. Baker Heights Development, Baker View Apartments. The Baker Heights Development was purchased by EHA in 1951. It is located on the 1200 - 1400 blocks of Poplar, Larch, Hemlock and the west side of Pine, and includes 2605 15<sup>th</sup> Street. This development was built by EHA under the Federal Housing Program in 1943. Title was transferred to EHA in 1951. At the time EHA took title to the property, EHA had no knowledge or reason to believe that the property was potentially contaminated by the ASARCO Smelter operations. In 1951, standard practice did not include conducting "Phase I" environmental assessments or other due diligence activities. Because EHA could not have known that the site was potentially contaminated, EHA should not be treated as a liable party under MTCA based on its ownership of the Baker Heights development.

1111 THIRD  
AVENUE  
Suite 3400  
SEATTLE  
Washington  
98101-3299

Telephone  
(206) 447-4400  
Facsimile  
(206) 447-9700  
Website  
WWW.FOSTER.COM

ANCHORAGE  
Alaska

PORTLAND  
Oregon

SEATTLE  
Washington

SPOKANE  
Washington

2. Grandview Homes. The Grandview Homes property was purchased by EHA in 1951. The property is located on the 700 - 800 blocks of Linden, Locust and Pine. At the time EHA took title to the property, EHA had no knowledge or reason to believe that the property was potentially contaminated by the ASARCO Smelter operations. In 1951, standard practice did not include conducting "Phase I" environmental assessments or other due diligence activities. Because EHA could not have known that the site was potentially contaminated, EHA should not be treated as a liable party under MTCA based on its ownership of the Grandview Homes development.

3. Ballpark (abutting Wiggums Hollow Park). EHA took title to the Ballpark on the north side of 12<sup>th</sup> Street, opposite Larch Street, in 1951. At the time EHA took title to the property, EHA had no knowledge or reason to believe that the property was potentially contaminated by the ASARCO Smelter operations. In 1951, standard practice did not include conducting "Phase I" environmental assessments or other due diligence activities. Because EHA could not have known that the site was potentially contaminated, EHA should not be treated as a liable party under MTCA based on its ownership of the Ballpark.

4. 12 Pines. 12 Pines was purchased by EHA in 1999. The property is located at 2701 - 2741 12<sup>th</sup> Street. Prior to purchasing the 12 Pines project, EHA had sampling done of the soils throughout the site. A copy of the sampling results is attached as Exhibit A. Out of 150 samples, none tested at above applicable MTCA cleanup levels. EHA therefore undertook appropriate inquiry at the time of its acquisition, consistent with good commercial practice in order to minimize liability. Because the 12 Pines property is not contaminated, it cannot reasonably be argued that any hazardous substances were released or disposed of on or at the 12 Pines site, and EHA should not be treated as a liable party under MTCA based on its ownership of 12 Pines.

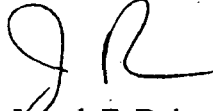
5. Pine Village. EHA purchased Pine Village in 2002. Pine Village is located at 2902 13<sup>th</sup> Street. Pine Village is further away from the ASARCO Smelter than the 12 Pines property mentioned above. EHA thus could reasonably determine that the Pine Village site was also not contaminated and not the source of a release or threatened release at the ASARCO Everett site. Phase II environmental testing on the Pine Village site, conducted by PBS Engineering, confirmed that the Pine Village site was also below Ecology-identified cleanup standards. A copy of the sampling results is attached as Exhibit B. Because the Pine Village property is not contaminated, it cannot reasonably be argued that any hazardous substances were released or disposed of on or at the Pine Village site, and EHA should not be treated as a liable party under MTCA based on its ownership of Pine Village.

EHA believes that its acquisition of housing projects in or adjacent to the Everett ASARCO site does not make EHA a liable party under MTCA for the Everett ASARCO site. EHA believes that, among other things, it qualifies for the defense provided for in 70.105D.040(3)(b).

April 20, 2004  
Page 3

Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'J E Delaney', written in a cursive style.

Joseph E. Delaney

JED:klh

cc: Bud Alkire  
Darcy Walker



5219 North Shirley  
Suite 100  
Ruston, WA 98407  
(253) 752-1470  
FAX (253) 752-7663  
www.hydrometrics.com

March 4, 1999

Bud Alkire, Director of Rentals  
Everett Housing Authority  
P.O. Box 1547  
Everett, WA 98206

RE: Soil Sample Results For 12 Pines Apartments

Dear Bud:

I have attached a data validation summary for the samples collected at the properties near Poplar and 12th Street (12 Pines Apartments) as you requested. Earlier, you were notified that visual inspection of the data did not indicate any quality control violations for the arsenic results.

Upon completion of data validation, all quality control criteria were met except that four field duplicate samples were out of control limits for lead analyses. However, it is noted that both sample results (original and duplicate) for the four sites are well below the Method A residential cleanup level of 250 mg/kg (see page 2 of the attached memorandum).

If you have any questions, please call me.

Sincerely,

Hydrometrics, Inc.

Steve Thompson  
Project Manager

cc: Tom Aldrich, Asarco

Attachment

## MEMORANDUM

**DATE:** 3/3/99  
**TO:** Steve Thompson  
**FROM:** Clare Bridge  
**SUBJECT:** Validation Summary for November 1998 Soil Data for Everett Housing Authority

### XRF Analysis (Ruston Laboratory):

- A total of 185 samples were analyzed for total arsenic and total lead. Of these, 150 were original field samples, and 35 were field duplicates. Exceedances on field duplicates as described in the following bullet were the only quality control problems associated with the XRF analyses.
- Four of the 35 lead field duplicates were out of control limits. Lead results from all samples collected at the same site were flagged to indicate a possible lack of reproducibility. This resulted in a total of 40 flags, or approximately 22% of the lead results.

### Confirmation Sample Analysis (Aarco's Technical Services Laboratory):

- A total of 7 samples were submitted for analysis by traditional wet chemistry methods in order to confirm the XRF results.
- There were no laboratory quality control problems associated with the confirmation sample analyses.
- The agreement between results obtained by the two analysis methods was excellent:
  - All arsenic results were reported as <18 ppm by both analysis methods.
  - All lead results were less than five times the reporting level of 20 ppm. For lead, results obtained by XRF and wet chemistry were compared using relative percent differences to determine the variability. In order to determine whether there was a bias between the methods, recovery rates were also calculated (XRF result divided by the wet chemistry result).
    - Relative percent differences between the XRF and wet chemistry methods were between 1 and 12 percent, with an average of 6 percent.
    - Recoveries were all between 94 and 112 percent. Two recoveries were less than 100 percent; 5 recoveries were greater than 100 percent.

**Attachments:** Quality Control Violations for Everett Housing Authority Nov. 1998 XRF Data  
Summary of Sample and Quality Control Completeness for XRF Analyses  
Database for Everett Housing Authority November 1998 XRF Data  
Database for Everett Housing Authority November 1998 Confirmation Data

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**Quality Control Violations for Everett Housing Authority, November 1998 XRF Data**

The PB RPD was out of range for the field replicate EVT-9811-04-B, site 04. The original value was 90, the duplicate sample EVT-9811-04-BD value was < 20, and the RPD \*OUT\*  $|70| > 40$ . The following results for the site 04, sample date 11/17/98, and using the first 0 characters of the sample number have been flagged with 'UJ4,FLDUP' or 'J4,FLDDUP': EVT-9811-04-A, EVT-9811-04-AD, EVT-9811-04-B, EVT-9811-04-BD, EVT-9811-04-C, EVT-9811-04-CD, EVT-9811-04-D, EVT-9811-04-DD, EVT-9811-04-E, EVT-9811-04-ED

The PB RPD was out of range for the field replicate EVT-9811-06-A, site 06. The original value was 96, the duplicate sample EVT-9811-06-AD value was 53, and the RPD \*OUT\*  $|43| > 40$ . The following results for the site 06, sample date 11/17/98, and using the first 0 characters of the sample number have been flagged with 'UJ4,FLDUP' or 'J4,FLDDUP': EVT-9811-06-A, EVT-9811-06-AD, EVT-9811-06-B, EVT-9811-06-BD, EVT-9811-06-C, EVT-9811-06-CD, EVT-9811-06-D, EVT-9811-06-DD, EVT-9811-06-E, EVT-9811-06-ED

The PB RPD was out of range for the field replicate EVT-9811-18-A, site 18. The original value was < 20, the duplicate sample EVT-9811-18-AD value was 73, and the RPD \*OUT\*  $|53| > 40$ . The following results for the site 18, sample date 11/17/98, and using the first 0 characters of the sample number have been flagged with 'UJ4,FLDUP' or 'J4,FLDDUP': EVT-9811-18-A, EVT-9811-18-AD, EVT-9811-18-B, EVT-9811-18-BD, EVT-9811-18-C, EVT-9811-18-CD, EVT-9811-18-D, EVT-9811-18-DD, EVT-9811-18-E, EVT-9811-18-ED

The PB RPD was out of range for the field replicate EVT-9811-22-B, site 22. The original value was 69, the duplicate sample EVT-9811-22-BD value was < 20, and the RPD \*OUT\*  $|49| > 40$ . The following results for the site 22, sample date 11/17/98, and using the first 0 characters of the sample number have been flagged with 'UJ4,FLDUP' or 'J4,FLDDUP': EVT-9811-22-A, EVT-9811-22-AD, EVT-9811-22-B, EVT-9811-22-BD, EVT-9811-22-C, EVT-9811-22-CD, EVT-9811-22-D, EVT-9811-22-DD, EVT-9811-22-E, EVT-9811-22-ED

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**SUMMARY OF SAMPLE AND QUALITY CONTROL COMPLETENESS  
FOR XRF ANALYSES  
EVERETT HOUSING AUTHORITY  
NOVEMBER 1998**

**OVERALL COMPLETENESS**

Parameter	# of Samples	# Not Rejected	% Not Rejected	# Without EPA Flags	% Without EPA Flags	# Without Freq Violation	% Without Freq Violation
Arsenic	185	185	100%	185	100%	185	100%
Lead	185	185	100%	145	78%	185	100%

**LABORATORY DUPLICATES**

Parameter	# of Samples	# Within CL	% Within CL	1/16 Required	Frequency % of QC
Arsenic	14	14	100%	12	117%
Lead	14	14	100%	12	117%

**FIELD DUPLICATES**

Parameter	# of Samples	# Within CL	% Within CL	1/20 Required	Frequency % of QC
Arsenic	35	35	100%	10	350%
Lead	35	30	86%	10	350%

**LABORATORY CONTROL SAMPLES**

Parameter	# of Samples	# Within CL	% Within CL	1/day Required	Frequency % of QC
Arsenic	4	4	100%	4	100%
Lead	4	4	100%	4	100%

**CALIBRATION VERIFICATION**

Parameter	# of Samples	# Within CL	% Within CL	1/32 Required	Frequency % of QC
Arsenic	15	15	100%	6	250%
Lead	15	15	100%	6	250%

a:\b\user81\work\lurtable.xls\1113\99\008\4357\067\0813

Database for Everett Housing Authority  
November 1998 XRF Data

Sample Number	Lab Number		Arsenic	Lead
EVT-9811-01-A	98R-02779		18 U	96
EVT-9811-01-B	98R-02780		18 U	58
EVT-9811-01-C	98R-02781		18 U	57
EVT-9811-01-D	98R-02782		18 U	20 U
EVT-9811-01-E	98R-02783		18 U	20 U
EVT-9811-02-A	98R-02784		18 U	114
EVT-9811-02-B	98R-02785		18 U	54
EVT-9811-02-C	98R-02786		18 U	20 U
EVT-9811-02-D	98R-02787		18 U	20 U
EVT-9811-02-E	98R-02788		18 U	20 U
EVT-9811-03-A	98R-02789		18 U	67
EVT-9811-03-B	98R-02790		18 U	33
EVT-9811-03-C	98R-02791		18 U	20 U
EVT-9811-03-D	98R-02792		18 U	20 U
EVT-9811-03-E	98R-02793		18 U	20 U
EVT-9811-04-A	98R-02794		18 U	82 J4
EVT-9811-04-AD	98R-02799	Duplicate	18 U	101 J4
EVT-9811-04-B	98R-02795		18 U	90 J4
EVT-9811-04-BD	98R-02800	Duplicate	18 U	20 U, UJ4
EVT-9811-04-C	98R-02796		18 U	20 U, UJ4
EVT-9811-04-CD	98R-02801	Duplicate	18 U	20 U, UJ4
EVT-9811-04-D	98R-02797		18 U	20 U, UJ4
EVT-9811-04-DD	98R-02802	Duplicate	18 U	20 U, UJ4
EVT-9811-04-E	98R-02798		18 U	20 U, UJ4
EVT-9811-04-ED	98R-02803	Duplicate	18 U	20 U, UJ4
EVT-9811-05-A	98R-02804		18 U	44
EVT-9811-05-B	98R-02805		18 U	20 U
EVT-9811-05-C	98R-02806		18 U	20 U
EVT-9811-05-D	98R-02807		18 U	20 U
EVT-9811-05-E	98R-02808		18 U	22
EVT-9811-06-A	98R-02809		18 U	96 J4
EVT-9811-06-AD	98R-02814	Duplicate	18 U	53 J4
EVT-9811-06-B	98R-02810		18 U	20 U, UJ4
EVT-9811-06-BD	98R-02815	Duplicate	18 U	20 U, UJ4
EVT-9811-06-C	98R-02811		18 U	20 U, UJ4
EVT-9811-06-CD	98R-02816	Duplicate	18 U	20 U, UJ4
EVT-9811-06-D	98R-02812		18 U	20 J4
EVT-9811-06-DD	98R-02817	Duplicate	18 U	20 U, UJ4
EVT-9811-06-E	98R-02813		18 U	20 U, UJ4
EVT-9811-06-ED	98R-02818	Duplicate	18 U	20 U, UJ4
EVT-9811-07-A	98R-02819		18 U	74
EVT-9811-07-B	98R-02820		18 U	52

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Page 1

**Database for Everett Housing Authority  
November 1998 XRF Data**

Sample Number	Lab Number		Arsenic	Lead
EVT-9811-07-C	98R-02821		18 U	38
EVT-9811-07-D	98R-02822		18 U	43
EVT-9811-07-E	98R-02823		18 U	20 U
EVT-9811-08-A	98R-02824		18 U	123
EVT-9811-08-B	98R-02825		18 U	103
EVT-9811-08-C	98R-02826		18 U	20 U
EVT-9811-08-D	98R-02827		18 U	20 U
EVT-9811-08-E	98R-02828		18 U	21
EVT-9811-09-A	98R-02829		18 U	20 U
EVT-9811-09-B	98R-02830		18 U	34
EVT-9811-09-C	98R-02831		18 U	45
EVT-9811-09-D	98R-02832		18 U	20 U
EVT-9811-09-E	98R-02833		18 U	20 U
EVT-9811-10-A	98R-02834		18 U	25
EVT-9811-10-B	98R-02835		18 U	25
EVT-9811-10-C	98R-02836		18 U	20 U
EVT-9811-10-D	98R-02837		18 U	33
EVT-9811-10-E	98R-02838		18 U	20 U
EVT-9811-11-A	98R-02839		18 U	94
EVT-9811-11-AD	98R-02844	Duplicate	18 U	76
EVT-9811-11-B	98R-02840		18 U	37
EVT-9811-11-BD	98R-02845	Duplicate	18 U	22
EVT-9811-11-C	98R-02841		18 U	25
EVT-9811-11-CD	98R-02846	Duplicate	18 U	29
EVT-9811-11-D	98R-02842		18 U	20 U
EVT-9811-11-DD	98R-02847	Duplicate	18 U	20 U
EVT-9811-11-F	98R-02843		18 U	20 U
EVT-9811-11-FD	98R-02848	Duplicate	18 U	20 U
EVT-9811-12-A	98R-02849		18 U	20 U
EVT-9811-12-B	98R-02850		18 U	20 U
EVT-9811-12-C	98R-02851		18 U	20 U
EVT-9811-12-D	98R-02852		18 U	20 U
EVT-9811-12-E	98R-02853		18 U	20 U
EVT-9811-13-A	98R-02854		18 U	49
EVT-9811-13-B	98R-02855		18 U	43
EVT-9811-13-C	98R-02856		18 U	20 U
EVT-9811-13-D	98R-02857		18 U	20 U
EVT-9811-13-E	98R-02858		18 U	20 U
EVT-9811-14-A	98R-02859		18 U	29
EVT-9811-14-B	98R-02860		18 U	20 U
EVT-9811-14-C	98R-02861		18 U	20 U
EVT-9811-14-D	98R-02862		18 U	20 U

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Database for Everett Housing Authority  
November 1998 XRF Data

Sample Number	Lab Number		Arsenic	Lead
EVT-9811-14-B	98R-02863		18 U	20 U
EVT-9811-15-A	98R-02864		18 U	28
EVT-9811-15-AD	98R-02869	Duplicate	18 U	36
EVT-9811-15-B	98R-02865		18 U	20 U
EVT-9811-15-BD	98R-02870	Duplicate	18 U	22
EVT-9811-15-C	98R-02866		18 U	20 U
EVT-9811-15-CD	98R-02871	Duplicate	18 U	20 U
EVT-9811-15-D	98R-02867		18 U	20 U
EVT-9811-15-DD	98R-02872	Duplicate	18 U	20 U
EVT-9811-15-E	98R-02868		18 U	20 U
EVT-9811-15-ED	98R-02873	Duplicate	18 U	20 U
EVT-9811-16-A	98R-02874		18 U	39
EVT-9811-16-B	98R-02875		18 U	20 U
EVT-9811-16-C	98R-02876		18 U	20 U
EVT-9811-16-D	98R-02877		18 U	20 U
EVT-9811-16-E	98R-02878		18 U	20 U
EVT-9811-17-A	98R-02879		18 U	104
EVT-9811-17-B	98R-02880		18 U	21
EVT-9811-17-C	98R-02881		18 U	20 U
EVT-9811-17-D	98R-02882		18 U	20 U
EVT-9811-17-E	98R-02883		18 U	20 U
EVT-9811-18-A	98R-02884		18 U	20 U, UJ4
EVT-9811-18-AD	98R-02889	Duplicate	18 U	73 J4
EVT-9811-18-B	98R-02885		18 U	20 U, UJ4
EVT-9811-18-BD	98R-02890	Duplicate	18 U	20 U, UJ4
EVT-9811-18-C	98R-02886		18 U	20 U, UJ4
EVT-9811-18-CD	98R-02891	Duplicate	18 U	20 U, UJ4
EVT-9811-18-D	98R-02887		18 U	20 U, UJ4
EVT-9811-18-DD	98R-02892	Duplicate	18 U	20 U, UJ4
EVT-9811-18-E	98R-02888		18 U	20 U, UJ4
EVT-9811-18-ED	98R-02893	Duplicate	18 U	20 U, UJ4
EVT-9811-19-A	98R-02894		18 U	68
EVT-9811-19-B	98R-02895		18 U	20 U
EVT-9811-19-C	98R-02896		18 U	20 U
EVT-9811-19-D	98R-02897		18 U	20 U
EVT-9811-19-E	98R-02898		18 U	20 U
EVT-9811-20-A	98R-02899		18 U	88
EVT-9811-20-B	98R-02900		18 U	41
EVT-9811-20-C	98R-02901		18 U	33
EVT-9811-20-D	98R-02902		18 U	41
EVT-9811-20-E	98R-02903		18 U	20
EVT-9811-21-A	98R-02904		18 U	76

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Database for Everett Housing Authority  
November 1998 XRF Data

Sample Number	Lab Number	Arsenic	Lead
EVT-9811-21-B	98R-02905	18 U	25
EVT-9811-21-C	98R-02906	18 U	20 U
EVT-9811-21-D	98R-02907	18 U	20 U
EVT-9811-21-E	98R-02908	18 U	20 U
EVT-9811-22-A	98R-02909	18 U	57 J4
EVT-9811-22-AD	98R-02914	18 U	41 J4
EVT-9811-22-B	98R-02910	18 U	69 J4
EVT-9811-22-BD	98R-02915	18 U	20 U, U14
EVT-9811-22-C	98R-02911	18 U	20 U, U14
EVT-9811-22-CD	98R-02916	18 U	20 U, U14
EVT-9811-22-D	98R-02912	18 U	20 U, U14
EVT-9811-22-DD	98R-02917	18 U	20 U, U14
EVT-9811-22-E	98R-02913	18 U	20 U, U14
EVT-9811-22-HD	98R-02918	18 U	20 U, U14
EVT-9811-23-A	98R-02919	18 U	106
EVT-9811-23-B	98R-02920	18 U	118
EVT-9811-23-C	98R-02921	18 U	20 U
EVT-9811-23-D	98R-02922	18 U	20 U
EVT-9811-23-E	98R-02923	18 U	20 U
EVT-9811-24-A	98R-02924	18 U	37
EVT-9811-24-B	98R-02925	18 U	21
EVT-9811-24-C	98R-02926	18 U	20 U
EVT-9811-24-D	98R-02927	18 U	20 U
EVT-9811-24-E	98R-02928	18 U	33
EVT-9811-25-A	98R-02929	18 U	20 U
EVT-9811-25-AD	98R-02934	18 U	23
EVT-9811-25-B	98R-02930	18 U	22
EVT-9811-25-BD	98R-02935	18 U	22
EVT-9811-25-C	98R-02931	18 U	20 U
EVT-9811-25-CD	98R-02936	18 U	20 U
EVT-9811-25-D	98R-02932	18 U	20 U
EVT-9811-25-DD	98R-02937	18 U	20 U
EVT-9811-25-E	98R-02933	18 U	20 U
EVT-9811-25-HD	98R-02938	18 U	20 U
EVT-9811-26-A	98R-02939	18 U	28
EVT-9811-26-B	98R-02940	18	23
EVT-9811-26-C	98R-02941	18 U	20 U
EVT-9811-26-D	98R-02942	18 U	20 U
EVT-9811-26-E	98R-02943	18 U	147
EVT-9811-27-A	98R-02944	18 U	24
EVT-9811-27-B	98R-02945	18 U	20 U
EVT-9811-27-C	98R-02946	18 U	20 U

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**Database for Everett Housing Authority  
November 1998 XRF Data**

<b>Sample Number</b>	<b>Lab Number</b>	<b>Arsenic</b>	<b>Lead</b>
EVT-9811-27-D	98R-02947	18 U	20 U
EVT-9811-27-B	98R-02948	18 U	20 U
EVT-9811-28-A	98R-02949	18 U	198
EVT-9811-28-B	98R-02950	18 U	121
EVT-9811-28-C	98R-02951	18 U	32
EVT-9811-28-D	98R-02952	18 U	25
EVT-9811-28-E	98R-02953	18 U	20 U
EVT-9811-29-A	98R-02954	18 U	54
EVT-9811-29-B	98R-02955	18 U	29
EVT-9811-29-C	98R-02956	18 U	24
EVT-9811-29-D	98R-02957	18 U	20 U
EVT-9811-29-E	98R-02958	18 U	20 U
EVT-9811-30-A	98R-02959	18 U	89
EVT-9811-30-B	98R-02960	18 U	20 U
EVT-9811-30-C	98R-02961	18 U	20 U
EVT-9811-30-D	98R-02962	18 U	20 U
EVT-9811-30-E	98R-02963	18 U	20 U



# **Phase Two Environmental Site Assessment of Shallow Soils**

**Pine Village  
2902 13th Street  
Everett, Washington**

**prepared for:  
Everett Housing Authority  
Everett, Washington**

**September 2003  
Project #40488.000-02**

130 Nickerson Street  
Suite 107  
Seattle, WA 98109  
206.233.9639 FAX  
206.762.4780 FAX

**ENGINEERING AND ENVIRONMENTAL**

**www.pbseenv.com**

## **PHASE TWO ENVIRONMENTAL ASSESSMENT OF SHALLOW SOILS**

**Pine Village  
2902 13th Street  
Everett, Washington**

**Prepared for**

**Everett Housing Authority**

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**Prepared by**

**PBS Engineering and Environmental  
130 Nickerson Street, Suite 107  
Seattle, WA 98109**

**September 2003**

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Appendix A Laboratory Reports and Sample Chain-of-Custody

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PBS Engineering and Environmental  
40488.000-02

## 2902 13th Street, Everett, Washington

### 1.0 INTRODUCTION

PBS Environmental (PBS) completed a Phase Two Environmental Site Assessment of the property located at 2902 13th Street, Everett, Washington (Figure 1). The work was performed in accordance with the proposed scope of work dated August 25, 2003. The purpose of the study was to determine the concentrations arsenic in the soil on the subject property.

This report summarizes the results of the current investigation and outlines our current understanding of the site conditions.

#### 1.1 Site Description

The subject property is located at 2902 13th Street in Everett, Washington. The site is in use as Pine Village Apartments owned by the Everett Housing Authority; and the apartment units are currently being renovated and sold as condominiums.

A Phase One Environmental Site Assessment completed for the subject property by PBS in August 2003 indicated that the subject property is within the study area and Community Protection Measures Boundary of the historic Everett Smelter Site, which operated between 1894 and 1912. The Everett Smelter Site is approximately  $\frac{1}{4}$  mile north of the subject property. Some surrounding properties tested have exceeded Ecology's soil clean up level of 20 mg/kg for arsenic.

Based on the available information on the Everett Smelter Site and the data collected to-date from studies within the CPM Boundary, PBS considered this a *recognized environmental condition* and recommended that soil sampling be conducted in accordance with Ecology's recommended procedures to evaluate arsenic and lead concentrations on the subject property.

### 2.0 PURPOSE AND SCOPE

The purpose of this investigation was to identify potential areas of elevated concentrations of arsenic in selected areas of the complex. The scope of work consisted of the following:

- 1) Select six areas around the perimeter of the site and hand bore holes down to a depth of 24 inches below ground surface (bgs). Collect soil samples from each of the borings at 6-inch intervals and analyze each interval for arsenic concentration.
- 2) Complete a report to include a description of the field work, methods, observations, results of the analytical testing with laboratory reports and sample chain-of-custody documentation, and interpretation of the results.

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PBS Engineering and Environmental  
40488.000-02

**2902 13th Street, Everett, Washington**

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**3.0 FIELD METHODS**

On August 28, 2003, PBS completed the field sampling of soils on the subject property. The location of the soil sampling was determined with the assistance of Everett Housing Authority personnel (Figure 1). Each location was bored to a depth of 24 inches using a posthole digger. Each soil sample was taken as a composite between 6-inch intervals (0-6 inches, 6-12 inches, 12-18 inches, and 18-24 inches) starting from the bottom of each hole in order to eliminate sluff and possible cross-contamination from the upper intervals of the hole.

Each composite sample was placed into a 4-ounce sample jar and stored in a cooler with ice during field procedures until delivery to the project laboratory. All sampling equipment was decontaminated between each sampling interval using a detergent wash and distilled water rinse.

The samples were analyzed for arsenic in soils by Advanced Analytical Laboratory in Redmond, Washington.

Results of soil testing are discussed below, and are presented in Table 1.

**4.0 FINDINGS**

Eighteen (18) out of 24 soil samples analyzed by the laboratory contained detectable concentrations of arsenic at intervals ranging from 0-6 inches bgs to 18-24 inches bgs. The concentrations ranged from 2.1 mg/Kg to a maximum of 39 mg/Kg. The detected concentrations were below the Ecology cleanup level of 20 mg/Kg, with the one maximum concentration of 39 mg/Kg below the performance standard of 40 mg/Kg, based on a statistical evaluation developed in accordance with WAC 173-340-740, Compliance Monitoring in the MTCA Cleanup Regulation.

**5.0 CONCLUSIONS**

The shallow soils in the areas sampled were either non-detect or contained concentrations of arsenic below Ecology Method A Soil Cleanup Levels for Unrestricted (residential) Land Uses. The one sample that exceeded the cleanup level was within the performance standard, and therefore met the criteria for compliance monitoring. Based on these findings, no further investigation or remediation is recommended.

2902 13th Street, Everett, Washington

## 6.0 LIMITATIONS

PBS has prepared this report for use by Everett Housing Authority. This report is not intended for use by others without the written consent of PBS Engineering and Environmental. Our interpretation of subsurface conditions in this study is based on field observations and analytical data from the indicated explorations. Other regulated substances may exist in portions of the site that were not explored or analyzed.

## PBS ENGINEERING AND ENVIRONMENTAL

Harry Goren 9/12/03

Harry Goren                      Date  
Senior Project Manager

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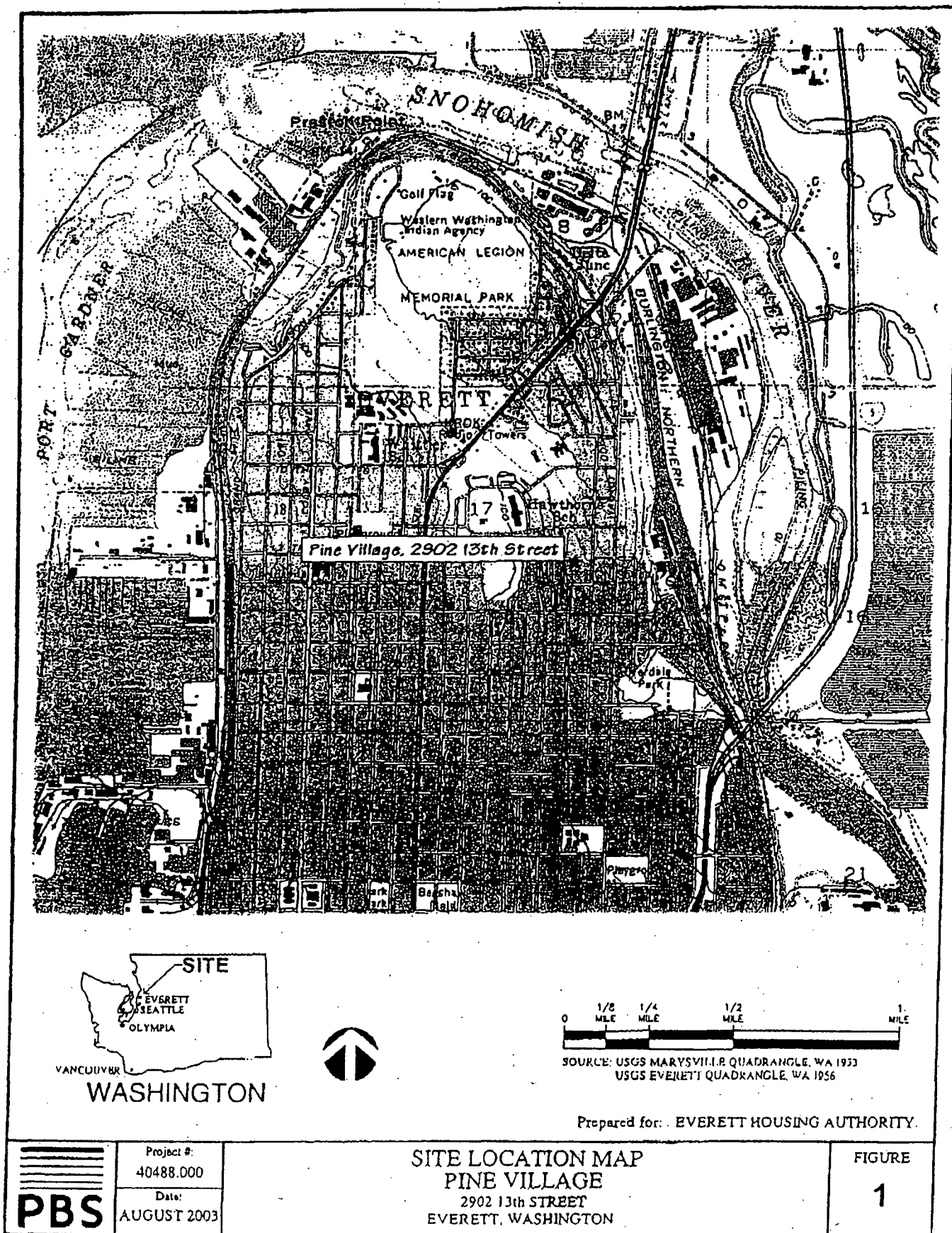
PBS Engineering and Environmental  
40488.000-02

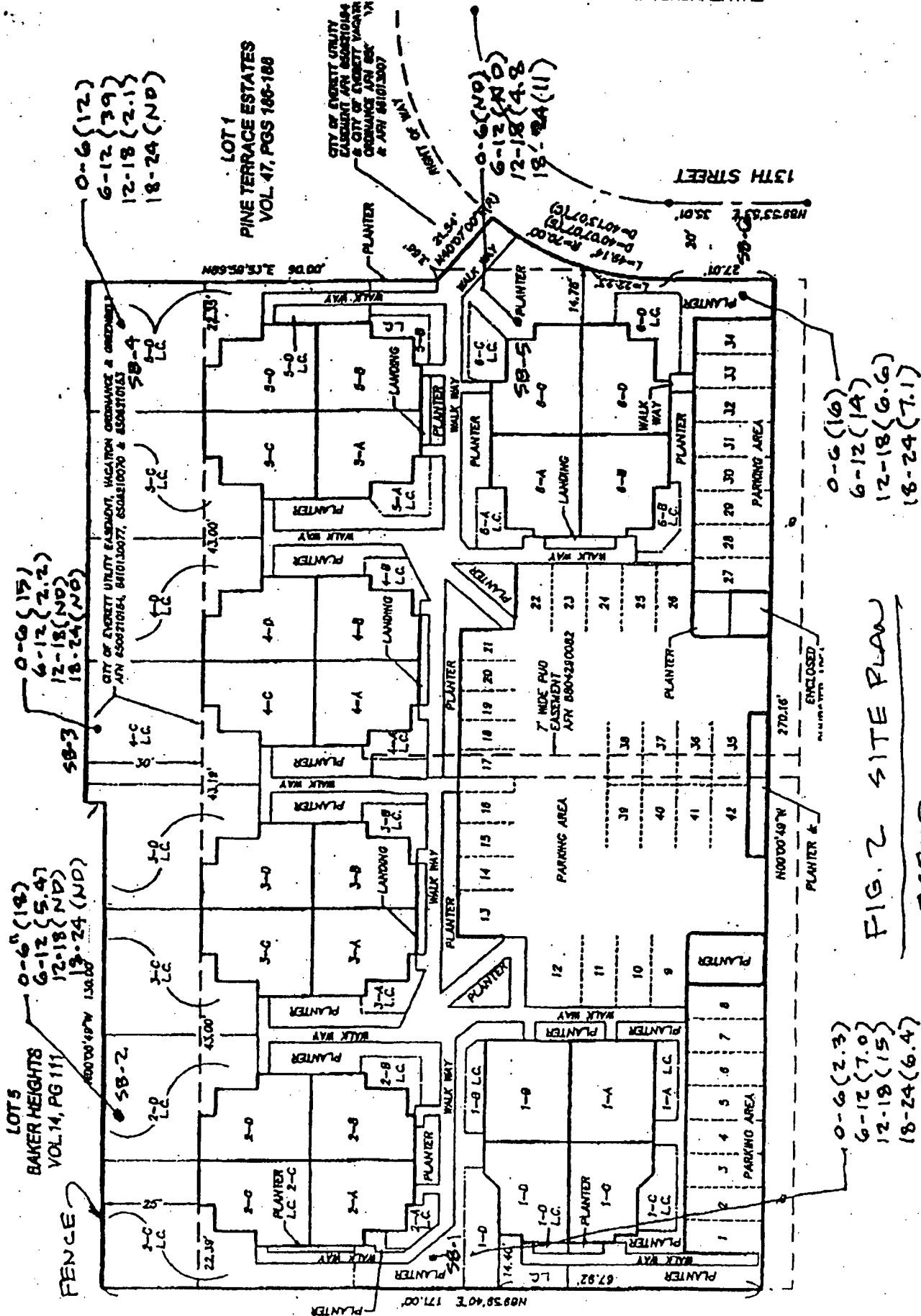
2902 13th Street, Everett, Washington

FIGURES

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2902 13th Avenue, Everett, Washington

TABLES

(SEE FIG. 2)

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**2902 13th Street, Everett, Washington**

**APPENDIX A  
LABORATORY REPORTS AND SAMPLE CHAIN-OF-CUSTODY**

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**PBS Engineering and Environmental  
40488.000-02**

Advanced Analytical Laboratory  
(425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7  
Client: PBS Environmental  
Project Manager: Harry Goren  
Client Project Name: Pine Village - Everett  
Client Project Number: 40488.000, Task 02  
Date received: 08/28/03

Analytical Results

Metals (7010), mg/kg		MTH BLK	LCS	SB1 0-6	SB1 8-12	SB1 12-18
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	78%	2.3	7.0	15

Data Qualifiers and Analytical Comments

nd - not detected at listed reporting limits

na - not analyzed

J - estimated value

Results reported on dry-weight basis

Acceptable Recovery limits: 70% TO 130%

Acceptable RPD limit: 30%

Advanced Analytical Laboratory  
(425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7  
Client: PBS Environmental  
Project Manager: Harry Goren  
Client Project Name: Pine Village - Everett  
Client Project Number: 40488.000, Task 02  
Date received: 08/28/03

**Analytical Results**

Metals (7010), mg/kg		MTH BLK	SB1 18-24	SB2 0-6	SB2 6-12	SB2 12-18
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	6.4	18	5.4	nd

**Date Qualifiers and Analytical Comments**

nd - not detected at listed reporting limits

na - not analyzed

J - estimated value

Results reported on dry-weight basis

Acceptable Recovery limits: 70% TO 130%

Acceptable RPD limit: 30%

Advanced Analytical Laboratory  
(425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7  
Client: PBS Environmental  
Project Manager: Harry Goren  
Client Project Name: Pine Village - Everett  
Client Project Number: 40488.000, Task 02  
Date received: 08/28/03

Analytical Results						Dupl
Metals (7010), mg/kg		MTH BLK	SB2 18-24	SB3 0-6	SB3 6-12	SB3 6-12
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	nd	15	2.2	1.9

Data Qualifiers and Analytical Comments

nd - not detected at listed reporting limits

na - not analyzed

J - estimated value

Results reported on dry-weight basis

Acceptable Recovery limits: 70% TO 130%

Acceptable RPD limit: 30%

Advanced Analytical Laboratory  
(425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7  
Client: PBS Environmental  
Project Manager: Harry Goren  
Client Project Name: Pine Village - Everett  
Client Project Number: 40488.000, Task 02  
Date received: 08/28/03

**Analytical Results**

Metals (7010), mg/kg		MTH 8LK	SB3 12-18	SB3 18-24	SB4 0-6	SB4 6-12
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	nd	nd	12	39

**Data Qualifiers and Analytical Comments**

nd - not detected at listed reporting limits

na - not analyzed

J - estimated value

Results reported on dry-weight basis

Acceptable Recovery limits: 70% TO 130%

Acceptable RPD limit: 30%

Advanced Analytical Laboratory  
(425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7  
Client: PBS Environmental  
Project Manager: Harry Goren  
Client Project Name: Pine Village - Everett  
Client Project Number: 40488.000, Task 02  
Date received: 08/28/03

**Analytical Results**

Metals (7010), mg/kg		MTH BLK	SB4 12-18	SB4 18-24	SB5 0-6	SB5 6-12
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	2.1	nd	nd	nd

**Data Qualifiers and Analytical Comments**

nd - not detected at listed reporting limits

na - not analyzed

J - estimated value

Results reported on dry-weight basis

Acceptable Recovery limits: 70% TO 130%

Acceptable RPD limit 30%

Advanced Analytical Laboratory  
(425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7  
Client: PBS Environmental  
Project Manager: Harry Goren  
Client Project Name: Pine Village - Everett  
Client Project Number: 40488.000, Task 02  
Date received: 08/28/03

Analytical Results		Dupl				
Metals (7010), mg/kg		MTH BLK	SB5 12-18	SB5 18-24	SB5 18-24	SB6 0-6
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Data extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Data analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	4.8	11	12	16

Data Qualifiers and Analytical Comments

nd - not detected at listed reporting limits

na - not analyzed

J - estimated value

Results reported on dry-weight basis

Acceptable Recovery limits: 70% TO 130%

Acceptable RPD limit: 30%

Advanced Analytical Laboratory  
(425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7  
Client: PBS Environmental  
Project Manager: Harry Goren  
Client Project Name: Pine Village - Everett  
Client Project Number: 40488.000, Task 02  
Date received: 08/28/03

Analytical Results							Dupl
Metals (7010), mg/kg		MTH BLK	SB6 6-12	SB6 12-18	SB6 18-24	SB6 18-24	
Matrix	Soil	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	14	6.6	7.1		6.1

Data Qualifiers and Analytical Comments

nd - not detected at listed reporting limits

na - not analyzed

J - estimated value

Results reported on dry-weight basis

Acceptable Recovery limits: 70% TO 130%

Acceptable RPD limit: 30%

## Chain of Custody Record

**ADVANCED ANALYTICAL**

2821 152 Avenue NE

REDMOND, WA 98052

Phone: (425) 497-0110 Fax: (425) 497-8089

e-mail: sechemlab@yahoo.com

Page 1 of 2

Client: PBS Environmental

Project Manager: Harry Goren

Address: 130 Nickerson Seattle

Project Name: Pine Village - Everett

Project Number: 40488.000 Task 02

Collector: Harry Goren

Phone: 206 233 9639 Fax: 762-4780

Date of collection: 8/28/03

Sample ID	Time	Matrix	Container type	8210 Volatiles	8210 VOCs	8210 PAK	PCB 8082	PCPA & Metals	Lead	Notes, comments	# of containers
1 SB-1-0-6	1345	S	40L								
2 SB-1-6-12											
3 SB-1-12-18											
4 SB-1-18-24											
5 SB-2-0-6	1345										
6 SB-2-6-12											
7 SB-2-12-18											
8 SB-2-18-24											
9 SB-3-0-6	1410										
10 SB-3-6-12											
11 SB-3-12-18											
12 SB-3-18-24											
13 SB-4-0-6	1445										
14 SB-4-6-12											
15 SB-4-12-18											

Sample receipt info:

Total # of containers:

Condition (temp, °C)

Seals (Intact?, Y/N)

Comments:

Turnaround time:

Same day ☐24 hr ☐48 hr ☐Standard ☒

Relinquished by:	Date/Time	Received by:	Date/Time
Harry Goren		P. Wawer	8/28/03 1630
Relinquished by:	Date/Time	Received by:	Date/Time

**ADVANCED ANALYTICAL**

## Chain of Custody Record

2521 152 Avenue NE

REDMOND, WA 98052

Phone: (425) 497-0110 Fax: (425) 497-9089

e-mail: aschemlab@yahoo.com

Page 2 of 2

Client:

PBS Environmental

Project Manager:

Harry Boren

Address:

same

Phone:

same

Fax:

Project Name:

Pine Village - Everett

Project Number:

~~404BB.000~~ 404BB.000

Collector:

H. Boren

Tank #2

Date of collection:

8/28/03

Figure.		Fax.		Date of Collection.														Notes, comments	# of containers
Sample ID	Time	Matrix	Container type	8260 Volatiles	8218 Volatiles	BTX	BTX-NWTPH-Ox	NWTPH-Ox	NWTPH-Ox	NWTPH-HClO	8270	8270 PAH	PCB 8082	Pesticides 8081	RCRA 8 Metals	Lead	ARSENIC		
1 SB-4-18-24	1425	S	402														X		
2 SB-5-0-6	1440																		
3 SB-5-6-12																			
4 SB-5-12-18																			
5 SB-5-18-24																			
6 SB-6-0-6	1500																		
7 SB-6-6-12																			
8 SB-6-12-18																			
9 SB-6-18-24		S	402														X		
10																			
11																			
12																			
13																			
14																			
15																			

Relinquished by:	Date/Time	Received by:	Date/Time
Harry Boren		V. Ward	8/28/03 16:52
Relinquished by:	Date/Time	Received by:	Date/Time

Sample receipt info:

Total # of containers:

Condition (temp, °C)

Seals (intact?, Y/N)

Comments:

Turnaround time:

Same day ☐24 hr ☐48 hr ☐Standard ☒

**EXHIBIT I**  
**LETTER FROM ECOLOGY TO CITY OF EVERETT**



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600  
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

May 18, 2004

Mr. Larry Crawford  
Assistant Mayor  
City of Everett  
2930 Wetmore  
Everett, WA 98201

**Re: City of Everett role in supporting the Everett Housing Authority's  
purchase and cleanup of properties at the Everett Smelter Site**

Dear Mr. Crawford:

The City of Everett (City) has asked the Department of Ecology (Ecology) to address a number of concerns related to the City's expected role in supporting the Everett Housing Authority's (EHA's) purchase and cleanup of properties at the Everett Smelter Site. This letter is intended to address those concerns.

As the City is aware, EHA is currently negotiating a purchase agreement with Asarco, Inc. (Asarco) to purchase properties at two separate portions of the Everett Smelter Site - the "Fenced Area" and the "Asarco Houses" area. EHA has approached Ecology prior to purchasing these properties, in order to settle in advance the liability under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, which EHA would otherwise acquire upon purchase. Ecology and EHA have negotiated two separate Prospective Purchaser Consent Decrees (PPCDs or decrees) in order to settle in advance EHA's liability. Both PPCDs are currently undergoing public comment. Assuming there will be no need to substantively revise the decrees as a result of either the public comment period ending on May 21 or any continued negotiations with EHA, it is expected these decrees can be signed and entered in Snohomish County Superior Court by June 1, 2004.

Under the terms of the PPCDs, EHA is assuming responsibility for cleanup of the Asarco Houses area of the Site, and also for completing cleanup of the Fenced Area portion of the Site following Asarco's removal of soils with arsenic concentrations in excess of 3000 parts per million, in accordance with the Integrated Final Cleanup Action Plan (1999), as amended (2002) (FCAP), Interim Action Report and Final Design Report. EHA's cleanup of the Fenced Area and Asarco Houses area will enable residential development to occur at these portions of the Site.

Ecology understands the City's role in supporting EHA's property purchases, subsequent remedial work and redevelopment to be as follows:

- (1) In accordance with the terms of agreement approved by the City Council on May 12, 2004 and attached to this letter, the City will act as guarantor of a Line of Credit Loan that will be provided to EHA by a financial institution;

Mr. Larry Crawford  
May 18, 2004  
Page 2

(2) The City will designate EHA as a community renewal agency and authorize EHA to exercise powers pursuant to the Community Renewal Law (RCW 35.81);

(3) The City will legally abandon rights of way and utilities in the Fenced Area and/or Asarco Houses, as necessary to allow EHA to proceed with work authorized under the decrees and Asarco to proceed with work ordered by Ecology under enforcement orders issued to Asarco.

Ecology does not consider the City to be acquiring liability under MTCA for its role in supporting EHA's purchase and cleanup of these properties, as outlined above.

We hope this response adequately addresses the City's concerns. Please feel free to call me at (360) 407-7177 for further discussion.

Sincerely,



James J. Pendowski, Program Manager  
Toxics Cleanup Program

Enclosure

cc: Mayor Ray Stephanson, City of Everett  
Jim Iles and Mark Soine, City Attorney's Office  
Kenneth S. Weiner, Preston Gates & Ellis LLP  
Elliott Furst, Senior Counsel  
Kristie Carevich, Assistant Attorney General  
Steve Thiele, Assistant Attorney General  
Dave South, Northwest Regional Office, Ecology

## **EVERETT SMELTER SITE EHA/CITY OF EVERETT DEAL POINTS**

- 1) **Land Use.** The City of Everett will at EHA's expense process as expeditiously as possible but within existing procedures and limitations, including consistency with the Integrated Cleanup Plan (FCAP/FEIS as amended), Final Design Report for the Everett Smelter Site, and land use codes, any land use, demolition, or construction permit, application or request (prepared by and at expense of EHA) including but not limited to:
  - a) Rezoning the existing R-2 zone (Fenced and Adjacent Area) to R-1A.
  - b) Subdivision and associated vacation of public rights-of-way (at no cost to EHA), including a new street at the northern portion of the site with a new controlled intersection with East Marine View Drive (at no cost to the City).
  - c) Demolition, public works, industrial waste discharge, and other required permits for remediation work, structures, roadways, utilities, and redevelopment activities.
  - d) Any supplemental environmental review required for the above actions.
  
- 2) **Terms of Loan Guarantee.** The City of Everett will guarantee EHA's Line of Credit loan in an amount not exceeding approximately \$5,700,000, and in a form mutually acceptable to the parties and the City of Everett and EHA's lender. The City of Everett and EHA will enter into an agreement under which:
  - a) Prior to drawing on the Line of Credit, EHA shall review the project budget with the City of Everett and then adopt a project budget and a contingency funding plan for project costs in excess of the approved budget.
  - b) The City of Everett may require its approval prior to any draw by EHA on the Line of Credit.
  - c) If the project costs at any time exceed 12 % of the original approved budget (prior to change orders), the City reserves the right to suspend cover any of the Line of Credit yet to be drawn down until the budget issue is resolved.
  - d) Fifty percent of any funds remaining from the proceeds of the sale of these properties by EHA after the payment of the Line of Credit will be paid by EHA to the City of Everett in consideration of the unreimbursed project support and risk borne by the City of Everett.
  - e) Require Asarco to accept all cleanup costs.
  
- 3) **Review Process.** The City of Everett and EHA will establish a review process for monitoring project implementation which will include, at a minimum, EHA providing to the City of Everett:
  - a) The ability to review, prior to execution, all contracts and agreements to be entered into by EHA for this project, including but not limited to purchase and sales agreements, construction and remediation contracts, and financing documents.
  - b) A weekly status report by the EHA project construction manager.
  - c) An updated budget whenever there is a cumulative budget or change orders of \$20,000 or greater.

- d) An initial project schedule and a revised project schedule whenever there is a cumulative schedule change of 7 days or more.
  - e) Access to the Property (subject to health and safety requirements) and to the project records of EHA, Asarco, and their contractors.
- 4) Community Renewal Actions. Upon consideration and action on findings regarding blight and the designation of the Fenced Area and Adjacent Area of the Everett Smelter Site as a community renewal area by ordinance, resolution or such other form of action required under RCW 35.81 (Community Renewal Law), the City of Everett will:
- a) Elect to have such powers of the community renewal agency exercised by EHA and to delegate to EHA appropriate powers necessary to carry out the redevelopment effort.
  - b) Consider and act upon a community renewal plan and any updates prepared by and at the expense of EHA.
  - c) Consider and act upon a community renewal project plan or proposal prepared by and at the expense of EHA.
  - d) Not proceed with redevelopment activities without prior City of Everett approval of a community renewal plan or project, including a budget that ensures the City's financial commitment to EHA will not be exceeded.
- 5) Project Responsibilities. The City of Everett and EHA will cooperate to the greatest extent possible in the undertaking of this redevelopment effort, including:
- a) EHA shall, or obtain an enforceable commitment from Asarco to, place and hydroseed a minimum two-foot cap of clean topsoil on the Fenced Area not later than September 1, 2005, unless expressly agreed otherwise in writing by the City of Everett.
  - b) EHA shall submit or obtain an enforceable commitment from Asarco to submit a Interim Site Restoration Plan for City of Everett approval prior to rough grading of the Fenced Area and cap placement, and, unless otherwise agreed by the City of Everett, shall submit the Final Site Restoration Plan and other plans identified in the FCAP/FEIS and Final Design Report for City of Everett approval not later than the submittal or any subdivision application to the City of Everett on the Fenced Area.
  - c) EHA shall be responsible for all remedial actions required by the Prospective Purchaser Consent Decrees (PPCDs), construction of all streets and utilities in the project area, all redevelopment activities as approved by the City of Everett.
  - d) EHA will fully support protection of the City of Everett, in the PPCDs and financing documents, against any liability, including liability for any remedial costs on public or private property in the project area. EHA shall include the City of Everett as an "EHA Indemnified Party" in its Remediation Agreement with Asarco. Any agreement between EHA and the City of Everett is contingent on the City of Everett receiving such protection.
  - e) Unless expressly agreed otherwise in writing by the City, the City will not take title, hold a deed of trust, or have a security interest in the property.
  - f) EHA shall immediately begin the process of marketing the subject properties to third party developers with a goal of obtaining a third party developer no later than August 2004.
  - g) Any sale of these properties is subject to the approval of the City of Everett.

- h) The City of Everett may direct the timing of the sale of the remediated parcels by EHA.
- i) EHA shall indemnify and hold the City of Everett harmless from any liability associated with this project.

**This document outlines generally terms the City of Everett and the Everett Housing Authority have discussed with respect to this project and the parties are in general agreement as to these deal points subject to the execution of a final agreement between the parties.**